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TO: Honorable Supervisors of the County Board

CC: County Clerk George Christenson (c/o Janelle Jensen)

FROM: Margaret C. Daun, Corporation Counsel  
Paul D. Kuglitsch, Deputy Corporation Counsel  
Anne B. Kearney, Deputy Corporation Counsel

DATE: August 28, 2020

SUBJECT: Referral of File No. 19-707

At its November 7, 2019 meeting, your honorable body referred File No. 19-707 to the Office of Corporation Counsel (“OCC”). File No. 19-707 is as follows:

A resolution by Supervisor Weishan, Jr., requesting an opinion from the State of Wisconsin Attorney General [“AG”] on whether 2013 Wisconsin Act 14, 2013 Wisconsin Act 203, and 2015 Wisconsin Act 55 violate the Civil Rights Act of 1964.

Importantly, the Board amended File No. 19-707 to instead request the above-noted opinion from the OCC, instead of the AG. This amendment was appropriate since only the OCC can consult with and request opinions of the AG – not the Board or the Administration. Wis. Stat. § 59.42(2)(b)4.

In addition, the AG will not review any requests for formal opinion unless the requestor provides a tentative conclusion and the reasoning upon which the conclusion is based.<sup>1</sup>

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<sup>1</sup> It should also be noted that the AG has issued guidance on asking for formal opinions. (Exhibit A). Important here is the fact that the AG has specifically stated that opinions on matters involving the exercise of legislative or executive judgment should not be requested. (*Id.* at ¶ 3.E.). Likewise, the AG will not issue opinions on the applicability of federal statutes and regulations administered by federal authorities like the Civil Rights Act of 1964. (*Id.* at ¶ 3.G.). So even though the OCC may request an opinion of the AG on File No. 19-707, it is unlikely that the AG will honor such a request.

Therefore, the below analysis by the OCC addresses whether 2013 Wisconsin Acts 14 (“Act 14”) and 203 (“Act 203”), and/or 2015 Wisconsin Act 55 (“Act 55”) (collectively, “the Acts”) individually or collectively violate the Civil Rights Act of 1964?

Brief Answer: No. The Civil Rights Act bars unequal application of voting requirements; outlaws discrimination based on race, religion or national origin in places of public accommodation and in public facilities; bars race, religious, national origin and gender discrimination by employers; enforces the desegregation of public schools; and prohibits the use of federal funds for any discriminatory program, among other things. The Acts reduced certain authorities of the Milwaukee County Board of Supervisors, changed the term of a County Board Supervisor from four years to two years, limited the salary of supervisors, capped the Board’s annual operating budget, created the Mental Health Board, and create a new contracting process in Milwaukee County.

Nothing in the Acts either facially or as applied runs afoul of the prohibitions in the Civil Rights Act, regardless of any demographic differences between Milwaukee County and other counties, because neither the reallocation of powers among different branches of government or bodies, nor the quantity or compensation of local elected officials for a given jurisdiction are rights protected under the Civil Rights Act and because, at root, Milwaukee County and any of its powers/authorities/division thereof among branches of government or bodies is entirely the purview of the state, as the County is an arm of the state.

## **I. BACKGROUND**

### ***What are 2013 Wisconsin Acts 203 and 14, and 2015 Wisconsin Act 55?***

#### **1. 2013 Wisconsin Act 203**

2013 Wisconsin Act 203 transfers the jurisdiction of all mental health functions, programs, and services from the County Board to a newly created Mental Health Board (“MHB”). On May 16, 2014, the OCC issued a report on the Act highlighting many of the changes. (Exhibit B).

Below are some of the more relevant provisions from the Act (as excerpted from the above-referenced report).

- MHB “shall adopt the policies ... regarding mental health and mental health institutions, programs, and services” in Milwaukee County. Wis. Stat. § 46.21(2)(a).
- MHB shall “[m]ake the final determination on mental health policy in Milwaukee County.” Wis. Stat. § 51.41(1s)(c).

- MHB shall “[r]eplace the Milwaukee County board of supervisors in all mental health functions that are typically performed by a county board of supervisors.” Wis. Stat. § 51.41(1s)(d).
- “The county board of supervisors may not form policies regarding mental health or mental health institutions, programs or services.” Wis. Stat. § 46.21(2)(a).
- “The Milwaukee County board of supervisors has no jurisdiction over any mental health policy, functions, programs or services.” Wis. Stat. § 51.41(5)(a).
- “The Milwaukee County board of supervisors may not create new mental health functions, programs, or services that are under the jurisdiction of the board of supervisors.” Wis. Stat. § 51.41.(5)(a).
- “The Milwaukee County board has no jurisdiction and may not take any actions, including under s. 59.52(6) and (31), 66.0301, and 66.0607(2), related to mental health functions, programs and services.” Wis. Stat. § 59.53(25).<sup>2</sup>

(Exhibit B, PP. 2-3).

## 2. 2013 Wisconsin Act 14

2013 Wisconsin Act 14 initiated some of the largest changes in governance and control of Milwaukee County government operations. Examples include:

- Limiting the annual salary that may be paid to a Milwaukee County Board Supervisor to the annual per capita income of Milwaukee County, as determined by the most recent U.S. Census. Wis. Stat. § 59.10(2)(c).
- Changing the term for Milwaukee County Supervisors from four years to two years. Wis. Stat. § 59.10(2)(b).
- Limiting expenditures that are directly related to the operation and functioning of the Board to 0.4% of the county’s portion of the county tax levy. Wis. Stat. § 59.60(7).
- Transferring or removing certain authorities of the Board and clarifying the roles of the Board and Executive in some areas where power is shared.
- Creating a new contracting process. Wis. Stat. § 59.52(31).

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<sup>2</sup> As to the statutes to which reference is made in § 59.53(25), § 59.52(6) deals with acquisition of property, § 59.52(31) deals with contract review and approvals post-Act 14, § 66.0301 deals with intergovernmental agreements, and § 66.067(2) deals with disbursements from the treasury.

- Contracts under \$100,000 may take effect upon the discretion of the administration.
- Contracts with a value between \$100,000 and \$300,000 may take effect if the Finance Committee does not vote to reject the contract.
  - If the Committee rejects a contract, it must go the full Board within 30 days for a vote.
- Contracts valued in excess of \$300,000 may take effect only if approved by a vote of the Board.

### 3. 2015 Wisconsin Act 55

2015 Wisconsin Act 55 basically continued what the start legislature started under Act 14 by further transferring and removing certain authorities from the Board.

- Divides control of county property between the Executive and the Board. Wis. Stat. §§ 59.17(2)(b)3 and 59.52(6).
  - Non-park property is controlled by the Executive. Wis. Stat. § 59.17(2)(b)3.
  - Property zoned as park is controlled by the Board. *Id.*
- Authorizes the Executive to sell, acquire, or lease [nonpark] property without Board approval and not subject to Board policy. *Id.*

For a more in-depth analysis of Acts 14 and 55, please see the OCC Report contained in File No. 17-274. (Exhibit C; embedded link below).

File No. 17-274

<https://milwaukeecounty.legistar.com/LegislationDetail.aspx?ID=2975579&GUID=F5E79274-8B24-4704-B455-1DE04878F2A2>

### ***What is the Civil Rights Act of 1964?***

The Civil Rights Act of 1964 was created “[t]o enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.”

The Act contains (11) eleven titles, each addressing a specific issue.

Title I—voting rights

Title II—public accommodations

Title III—desegregation of public facilities

Title IV—desegregation of public education

Title V—Commission on Civil Rights

Title VI—nondiscrimination in federally assisted programs

Title VII—equal employment opportunity, as amended by the Equal Employment

Opportunity Act of 1972

Title VIII—registration and voting statistics

Title IX—intervention and removal of cases

Title X—community relations service

Title XI—miscellaneous

As previously noted, the Act's eleven titles prohibit discrimination in the workplace, public accommodations, public facilities, and agencies receiving federal funds, and strengthen prohibitions on school segregation and discrimination in voter registration.

## **II. ANALYSIS**

The statutory changes under Acts 14, 203, and 55 restricting the powers of the Board, expanding the authority of the Executive, and creating the Mental Health Board are not related to the protections afforded by the Civil Rights Act. The Acts do not affect an individual's right to vote, they do not prohibit an individual's right to access public facilities or public accommodations, the Acts do not affect the desegregation of schools, they do not affect federal assisted programs, and the Acts have nothing to do with discrimination in the workplace. Simply put, there is no link between Acts 14, 203, and 55 and the Civil Rights Act of 1964. Moreover, the organization of Milwaukee County is entirely a matter of state control and discretion, not subject to review under the Civil Rights Act of 1964.

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## Preface

The criteria to be observed when requesting a formal opinion of the attorney general have not been summarized since 62 Op. Att'y Gen. Preface (1973). Many requesters are not familiar with those criteria, and other criteria have been established since that time. I am therefore taking this opportunity to summarize and refine those criteria that have been established in prior opinions. They are as follows:

1. Except as otherwise provided by statute, formal opinions may only be issued to the Governor, the Legislature, state officers and agencies, county corporation counsel and district attorneys in connection with matters within the scope of their respective official duties. Opinions may not be issued to city, village, town or other municipal attorneys or to private citizens. A request should not be made by any authorized agency or official to circumvent these requirements.

Although these have been longstanding guidelines, see 62 Op. Att'y Gen. Preface (1973), not all of them have been expressly stated in prior opinions.

2. Any request from a corporation counsel, district attorney or a state officer or state agency that has staff legal counsel should satisfy all of the following criteria:

A. The request should set forth a tentative conclusion upon any question presented and the reasoning upon which that conclusion is based.

B. The request should set forth and analyze all relevant statutory provisions, case law and other authorities, whether or not they support the tentative conclusion concerning the question presented.

C. A question should not be submitted simply because someone wishes it submitted. A question should not be submitted unless, after having given the problem careful consideration, a satisfactory legal answer cannot be reached.

These guidelines were previously stated in 62 Op. Att'y Gen. Preface (1973) and in 31 Op. Att'y Gen. Foreword (1942).

3. All opinion requests from any source should comply with the following criteria:

A. The request should state each question upon which an opinion is desired. 62 Op. Att'y Gen. Preface (1973).

B. The request should state all of the facts giving rise to each question presented. 62 Op. Att'y Gen. Preface (1973).

C. Any request requiring the resolution of questions of fact should not be submitted, since the attorney general has no authority to decide questions of fact. 77 Op. Att'y Gen. 36 (1988); 68 Op. Att'y Gen. 416 (1979); 40 Op. Att'y Gen. 3 (1951).

D. An opinion should not be requested on an issue that is the subject of current or reasonably imminent litigation, since an opinion of the attorney general might affect such litigation. 62 Op. Att'y Gen. Preface (1973).

E. Opinions on matters involving the exercise of legislative or executive judgment or the exercise of discretion by public officers should not be requested. 77 Op. Att'y Gen. 36 (1988); 62 Op. Att'y Gen. Preface (1973); 40 Op. Att'y Gen. 3 (1951).

F. Normally, opinion requests from the Legislature should be approved by the Senate Organization Committee or the Assembly Organization Committee. They should be limited to the validity or application of state statutes or to matters which are or will be pending before the Legislature, and should not be used as a vehicle to obtain legal advice for individual constituents or constituent governmental agencies. See OAG 58-88 (unpublished) (October 12, 1988).

G. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the applicability of federal statutes and regulations administered exclusively by federal authorities. See 77 Op. Att'y Gen. 287 (1988).

H. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances. See 77 Op. Att'y Gen. 120 (1988).

4. Although all of the foregoing criteria are subject to exception where the circumstances warrant, *see* 62 Op. Att'y Gen. Preface (1973), an opinion request which does not comply with these criteria may be returned to the requester with instructions to resubmit the request in an appropriate form.



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May 16, 2014

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### Initial Report on 2013 Act 203, Establishing the Milwaukee County Mental Health Board

This report includes information and Opinions of this Office on initial questions and issues that have arisen from 2013 Wisconsin Act 203, which created the Milwaukee County Mental Health Board (“MHB”). The Act made a number of substantial changes in the way mental health services are governed, administered and funded in Milwaukee County.

Neither the list of issues addressed nor the analysis provided is intended to be exhaustive. This report is intended as a practical guide for officials, administrators and employees during the early stages of the transition to MHB governance. Some of the information in this report addresses specific questions that have been posed to this Office. As additional questions arise, they can be addressed in detail by this Office or by others.<sup>1</sup>

At this early stage, there are no court rulings, administrative decisions or other precedents to guide interpretation of the new statutes. The language of the Act is clear in most places but potentially ambiguous or contradictory in others. Some of the observations in this report are sure to change over time. Unions or others are likely to raise legal challenges that could affect interpretations. And MHB may have differing interpretations once seated.

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<sup>1</sup> MHB appointments and related matters have been addressed elsewhere. In summary, 9 of MHB’s initial 11 members are to be appointed by the Governor by June 9, 2014, based on suggestions from the County Executive and the County Board, with two *ex officio* members. MHB will be attached to state DHS until January 1, 2015, when it becomes a County entity.



In the meantime, mental health services – as a matter both of statutory directive and moral obligation – must be provided with “no interruption.” Wis. Stat. § 51.41(12)(a). This report is intended to assist in doing so.

## **I. Background**

The Act was passed by both houses of the Legislature in Spring 2014. It was signed by Governor Walker on April 8 and published on April 9, 2014. It became effective April 10, 2014.

The Act contains 52 sections that amend dozens of state statutes, primarily in chapters 15, 46, and 51. Some of the provisions are automatically repealed as of January 1, 2015, and replaced by other provisions of the Act. Section 53 of the Act contains non-statutory provisions that aid in interpretation, set dates, etc.

The text can be found at <https://docs.legis.wisconsin.gov/2013/related/acts/203>

## **II. As of April 10, 2014, mental health policy and function lies with MHB; the County Board has no jurisdiction over mental health.**

The Act removes all mental health jurisdiction from the County Board; mental health in Milwaukee County is now under the jurisdiction of the Mental Health Board. This is stated numerous times in the Act’s statutory changes:

- MHB “shall adopt the policies ... regarding mental health and mental health institutions, programs, and services” in Milwaukee County. § 46.21(2)(a).
- MHB shall “[m]ake the final determination on mental health policy in Milwaukee County.” § 51.41(1s)(c).
- MHB shall “[r]eplace the Milwaukee County board of supervisors in all mental health functions that are typically performed by a county board of supervisors.” § 51.41(1s)(d).
- “The county board of supervisors may not form policies regarding mental health or mental health institutions, programs or services.” § 46.21(2)(a).
- “The Milwaukee County board of supervisors has no jurisdiction over any mental health policy, functions, programs or services.” § 51.41(5)(a).
- “The Milwaukee County board of supervisors may not create new mental health functions, programs, or services that are under the jurisdiction of the board of supervisors.” § 51.41.(5)(a).

- “The Milwaukee County board has no jurisdiction and may not take any actions, including under s. 59.52(6) and (31), 66.0301, and 66.0607(2), related to mental health functions, programs and services.” § 59.53(25).<sup>2</sup>

The County Board retains responsibility for the developmentally disabled, except where explicitly delegated to MHB. § 51.41(1)(b).

Because the Act took effect and removed County Board jurisdiction April 10, 2014, but the MHB is not likely to be seated until about July 1, 2014, there is a gap in policy governance over BHD.

BHD, under the control of the County Executive, will continue to operate its day-to-day operations in the interim (which were outside County Board purview in any event, *see* § 59.794(3)(a)(“the Board may not exercise day-to-day control of any county department or subunit of a department. Such control may be exercised only by the county executive as described in s. 59.17”)). Governance delegated to MHB over broader issues will be assumed by MHB when it convenes.

### **III. MHB jurisdiction applies to two County operational areas: Behavioral Health Division and Community Programs/Services**

MHB has jurisdiction over the “functions, programs, and services that Milwaukee County included in its 2014 budget under the behavioral health division unit 6300 and under the behavioral health community services branch of unit 8700.” 2013 Act 203 §53(3) (non-statutory provisions).

BHD (6300) includes:

- Management and support services
- Adult Crisis Services
- Inpatient Services (Adult & Children)
- Inpatient (Rehab Central)
- Inpatient (Hilltop)

The 2014 Adopted Budget has \$78.4 million in expenditures, a tax levy of \$47.2 million, revenues of \$31.2 million, and 525 FTE.

Behavioral Health Community Services Branch (8700) includes:

- Adult Day Treatment
- AODA (detox, outpatient, medication assisted treatment)
- Family Intervention Support Services
- CATC Wraparound and non-court-ordered Wraparound
- Mobile Urgent Treatment

<sup>2</sup> As to the statutes referenced in § 59.53(25), § 59.52(6) deals with acquisition of property, § 59.52(31) deals with contract review and approvals post-Act 14, § 66.0301 deals with intergovernmental agreements, and § 66.067(2) deals with disbursements from the treasury.

The 2014 Budget has \$101.4 million expenditures, a tax levy of \$10.3 million, revenues of \$91.1 million, and 100 FTE.

**Totals for the two units as shown in the adopted 2014 budget:**

- **\$179.8 million expenditures**
- **\$57.5 million tax levy**
- **\$122.3 million revenues**
- **625 FTE, including 753 individuals**

Until January 1, 2015, with the approval of the state DHS Secretary, MHB may transfer to itself jurisdiction over any other Milwaukee County function, service, or program that pertains to mental health or is highly integrated with mental health services and that is not already under its jurisdiction. § 51.41(5)(b). Starting January 1, 2015, such new jurisdiction may be claimed by MHB with the concurrence of the County Board. § 51.41(5)(b).

**IV. MHB has substantial duties and powers**

MHB shall “oversee the provision of mental health programs and services in Milwaukee County,” budget and allocate monies for them, and attempt to achieve cost savings. § 51.41(1s). MHB must commit to certain treatment concepts, such as community-based services and early intervention. *Id.*

MHB “has the primary responsibility for the well-being, treatment and care of the mentally ill, alcoholic, and other drug dependent citizens residing within Milwaukee County, including emergency services they need. § 51.42(1)(b).

MHB (rather than County Board) is now responsible for an annual cash reserve contribution of 2% of original cost or appraised value of buildings of “existing mental health infirmary structures and equipment.” § 46.18(13).

MHB is to meet six times a year and may also meet at the call of its chair or a majority of its members. § 51.41(3). MHB must hold an annual public hearing. § 51.41(3).

As a unit of local government, *see* § 19.42(7w)(e), MHB is subject to public records and open meetings laws.

**V. Directors, appointments, duties.**

The County Executive appoints the county DHS director as Community Programs director. § 51.42(6m). “Community Programs” in this context is broader than budget unit 8700 and includes essentially all of BHD (unit 6300) as well.

The County Executive nominates the BHD administrator, and sets the salary, benefits and job duties. § 54.41(9). *But see* § 46.21(3) (MHB determines the mental

health administrative and executive powers to be placed under the jurisdiction of the BHD administrator). The nomination is subject to MHB confirmation. *Id.*

The Executive also appoints, subject to MHB confirmation, a transition liaison to serve up to 12 months. § 54.41(11). The County Board cannot hire or remove the transition liaison or change salary or duties. *Id.*

The County DHS director, in his or her role as Community Programs director, has substantial oversight over federally or state funded inpatient and outpatient care and treatment, residential facilities, partial hospitalization, emergency care and supportive transitional services. *See* § 51.42(ar)4.

MHB may also (but is not required to) delegate mental health functions to the county DHS director. § 46.21(3).<sup>3</sup>

**VI. Mental health personnel now are now under the control of MHB, the County Executive and mental health administrators, and are not governed by general County ordinance.**

**Summary:** Either specifically or as part of the overall authority and structure of Act 203, control over personnel who work in MHB programs is exercised by MHB or by mental health administrators including the county DHS director, the BHD administrator and the County Executive or their delegates. This includes setting salaries and work conditions. The lone collective bargaining agreement, with the nurses' union, continues in force until it expires at the end of 2014. Under Act 10, it deals only with wages. Any replacement contract will go to MHB, not the County Board, for approval.

General County ordinances such as "status quo," minimum wage provisions, and wage and salary scales will not apply to mental health employees unless MHB or Mental Health Administrators choose to adopt them or to apply them in the interim.

The Civil Service Commission, rather than the Commission's Personnel Review Board, will hear appeals of terminations and disciplines directly.

**A. Wages, working conditions**

The Community Programs director (DHS director) is required by statute to "Establish salaries and personnel policies of the programs of the county department of community programs," subject only to County Executive and MHB approval. § 51.42(6m)(i).

This appears to cover most mental health employees. Any remaining employees would be covered by § 46.19(4), which specifies that "the salaries of any visiting

<sup>3</sup> Much of the statutory language in Ch. 46, dealing with county hospitals and other institutions, lay dormant in Milwaukee County, apparently for decades. Nonetheless, Act 203 amended many Ch. 46 provisions, stating that MHB shall now perform such functions as naming "trustees" who shall name a "superintendent" for an "institution" that, at least under a plain reading of the statute, includes the BHD residential, acute and emergency treatment units. *See* §§ 4.18(1), 46.19, 51.08. On the one hand, this could be seen a source of additional authority for MHB and the mental health administrators. On the other hand, this assumes meaning for language that has been ignored for decades.

physician and necessary additional officers and employees whose duties are related to mental health shall be fixed by the county executive.”<sup>4</sup>

Given the definitions included in § 53(3) of Act 203 (non-statutory provisions), these personnel provisions apply to employees in the 6300 and 8700 budget units, not to employees elsewhere in the County who may be peripherally related to mental health, e.g., an employee in the Comptroller’s office who handles mental health accounts.

As noted, the County Board “has no jurisdiction and may not take any actions ... related to mental health functions, programs and services.” § 59.53(25). In addition, the mental health budget is now under the control of MHB and the County Executive, with no control or approval of the County Board. *See* Sec. VII, *below*. In the face of these statutory directives, the County Board has no means to impose the provisions of general personnel ordinances on mental health employees, including the numerous Ch. 17 ordinances that concern matters ranging from position classification and advancement to salary structures and benefits. Likewise, no jurisdiction exists for the County Board to apply the “status quo” ordinances in sections 17.015 to 17.018 to mental health workers, nor to apply the minimum wage ordinances in Ch. 111.

Admittedly, questions here remain under study, for example application of existing County benefit and pension programs to mental health workers absent any direction to the contrary by MHB. Additional information on labor relations issues also could be required if the courts modify the implementation of Act 10.

**B. No change was made in the indemnification requirements of § 895.46**

§ 895.46 provides that a judgment entered against a public official or government employee because of acts committed while acting within the scope of his or her employment must be paid by the official’s or employee’s employer, i.e., Milwaukee County. This provision was not amended by Act 203 to account for MHB. Thus any such judgments will remain a general obligation of the County, as now.

**C. Mental health employees remain subject to the Civil Service System, administered for MHB by the County Human Resources department.**

General employment provisions found in the state civil service and public employee statutes will continue to apply to MHB and the mental health employees. *See*, e.g., § 46.19(3), applying the civil service system explicitly to employees who are “remove[d]” from a BHD or other institution; *see also* § 63.03(1), establishing civil service for “all office and positions in the public service in the county;” *see also generally* §§ 63.01-63.17, Stats., establishing Civil Service Commission for Milwaukee County.

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<sup>4</sup> Some potential ambiguities can be identified. For example, §§ 59.60(10) and 63.11 of the statutes provide general position-creation and salary setting powers to the County Board under its “organizational” and civil service powers. However, under standard rules of statutory construction, the newer, specific MHB provisions most likely would be interpreted by a court as trumping those older, general provisions. And the BHD director is authorized to “appoint” necessary employees, signifying also the ability to appoint employees to new positions.

The civil service procedures require the appointing authority to fill vacancies through an eligible list process (§§ 63.05, 63.08) and observe temporary appointment limits (§ 63.07), as assisted by the county personnel director. Given the County Board's lack of jurisdiction over mental health, § 51.45(5)(a), and MHB's authority to replace the County Board in all mental health functions, § 51.41(1s)(d), and MHB's budget authority, *see below*, MHB becomes the appointing authority.

**D. Appeals of terminations, demotions and appealable suspensions will be heard by the Civil Service Commission, not the Personnel Review Board.**

The County Board created the Personnel Review Board in 1978 to assist the Civil Service Commission by hearing civil service appeals. The Board relied on an interpretation of home rule and similar powers contained in § 59.03 (originally enacted as § 59.025) and under the powers granted to the County Board in § 59.15(2)(a) "as to any ... commission, position or employee in county service...." *See* MCO 33.01, invoking provisions of Ch. 118, Laws of 1973. However, Act 203 expressly precludes County Board jurisdiction over any mental health function, § 51.45(5)(a), and expressly grants MHB the authority to replace the County Board in all mental health functions, § 51.41(1s)(d). The County Board's creation of PRB to hear employment appeals no longer applies to mental health workers in budget units 6300 and 8700.

Instead, appeals will be heard by the Civil Service Commission under the procedures set out in § 63.10, Stats. These will include appeals of: demotion, discharge, suspensions of more than 10 days, or more than two suspensions of any length within 6 months. § 63.10(a). Neither the appointing authority nor the employee has a right to counsel, although the commission has the discretion to allow counsel.

An administrative appeal process can provide a grievance procedure consistent with § 66.0509(1m) for other matters.

The Civil Service Commission has five members. It appears nothing in the statutes technically would prevent the commission from deciding to meet in panels of three (still a quorum) to hear appeals, if that proved an expedient way to hear more appeals. However, only a unanimous vote of a panel of three (majority of the commission) could grant an employee's appeal, raising certain due process issues.

As to pending appeals arising from incidents on April 10 or later that have not been heard by the Civil Service Commission within the 21-day statutory limit, § 63.10(2), it may be that jurisdiction to challenge those appeals has been lost.

**E. Mental health workers could unionize.**

Mental health workers would have the ability to form and certify a union to exercise the limited collective bargaining powers available to public employees under Act 10, mainly wage negotiation. Negotiations would be conducted with the Executive Office. § 59.17(2)b.1. As a mental health contract, the collective bargaining agreement would be approved by MHB, not by the County Board. Funds required for higher salaries under a collective bargaining agreement would need to be found by MHB within the mental health budget.

**VII. The Milwaukee County mental health budget is set by the Executive and MHB, with the budgeted tax revenue levied by the County Board. § 51.41(4).**

**A. Budget process**

1. MHB proposes the total mental health budget, the proposed tax levy and the community aids amount. The proposed levy must be \$53 million to \$65 million, unless an allotment is added for new programs. § 51.41(4)(b).

2. The Executive may include in his/her proposed County budget a different levy amount, but still from \$53 million to \$65 million. *Id.* It is unclear how MHB would make its budget if the Executive reduced MHB's requested levy.

3. The County Board "shall incorporate into the budget for Milwaukee County" the tax levy amount proposed by the County Executive and the mental health community aids amount determined based on previous years, along with the overall mental health budget amount first proposed by MHB. *Id.*

4. MHB, the County Board and the Executive may jointly agree to a levy greater than \$65 million or less than \$53 million. Otherwise the levy proposed by the Executive shall be adopted.

5. The mental health levy becomes part of the overall county levy that is subject to the state-imposed levy rate limits of § 59.605(2).

The mental health levy now resembles the levy on County residents for non-elected boards including MATC, MMSD, the Wisconsin Center and SEWRPC, although those levies are not subject to the § 59.605(2) levy limit.

**B. Deficits, funds**

There is no provision for the County to make good a deficit if MHB falls short. MHB will need to make its own arrangements. This could include seeking a fund transfer from other County entities, which would require approval by two-thirds of the County Board and the Executive. MHB could also possibly carry a small deficit into its following year's budget, although details need to be examined further. The Comptroller has stated he may be statutorily prevented from releasing disbursements for MHB obligations if deficits are too high too early in the year.<sup>5</sup>

MHB is to use surpluses to finance a reserve of up to \$10 million under § 51.41(4)(d).

MHB (rather than County Board) is now responsible for an annual cash reserve contribution of 2% of original cost or appraised value of buildings of "existing mental health infirmary structures and equipment." § 46.18(13).

In 2014 only, the County Board is required to provide funds for MHB's board expenses. § 51.41(6) ("payment of expenses of the [MHB] and for the performance of the audit and the completion of the report" required by Act § 53(4).)

<sup>5</sup> Statutory obligations imposed on the Comptroller are complex and, as they may relate to MHB, are beyond the scope of this report.

### **C. Bonding**

MHB does not have any direct bonding authority, and, from a lender's perspective may not have any guaranteed future source from which to repay bonds other than its annual operating levy. Capital projects could be paid from current operating revenues. Only if the County Board offered to make its authority available could MHB projects be bonded through the County.

### **D. MHB determines the "manner" of mental health disbursements.**

Under § 46.21(6), "Disbursements shall be made in the manner that the ... Milwaukee County mental health Board... adopts." The methods of disbursements adopted by MHB must be "consistent with sound accounting and auditing procedure and with applicable federal statutes and regulations, state statutes and rules and requirements of the county auditor and county department of administration," but need not necessarily be controlled by those entities. § 46.21(6).

MHB may place "administrative and executive powers and duties of managing, operating, maintaining and improving institutions and departments," including "functions related to the central service departments," under the jurisdiction of other county entities. § 46.21(3r).

This allows but does not require MHB to use other county services or departments if desired (facilities, IMSD, HR, financial and purchasing services, comptroller, etc.). While MHB can seek services from County departments, the intent of the legislation should be seen as preventing MHB from requiring County departments to make changes in operations at MHB's request. A provision to that effect was introduced but then eliminated by amendment. See Sen. Am. 1 to Sen. Sub. Am. 1, § 15.

County departments will cross-charge MHB for services, as they do now. MHB is not required to use these County "vendors" (unless there are statutory requirements, such as using the Comptroller for certain funds or HR for civil service processing). MHB could seek outside services if it felt cross-charges were too high. There do not appear to be limitations on MHB's ability to outsource services or personnel.

MHB's budget and spending authority extends to creating or eliminating positions as it sees fit, consistent with civil service rules.

Since MHB has control over mental health issues, MHB would be empowered to receive additional funds through grants, etc., that could be applied to expenditures over which MHB has control.

"The County Board may not sell the county mental health complex ... without approval of the Milwaukee County mental health board." § 51.08.

### **VIII. MHB has the approval authority for mental health contracts and disbursements in Milwaukee County. § 51.41(10).**

Contracts of more than \$100,000 related to mental health to which Milwaukee County is a party take effect only if approved by MHB or if MHB does not vote to reject the contract within 28 days after it is signed and presented. § 51.41(10). The county executive is to countersign mental health contracts. *Id.*



Because these are, by statutory definition, “Contracts ... to which Milwaukee County is a party,” § 51.41.(10), comptroller and corporation counsel signatures are statutorily required. See § 59.42(2)(b); 59.255(2)(e).

The County Board is specifically barred from considering mental health contracts. “The county board of supervisors may not exercise approval or disapproval power over any contract relating to mental health or mental health institutions, programs, or services.” § 46.21(2)(j). Moreover, Milwaukee County cannot use central its central purchasing department for “matters that are related to mental health.” § 46.21(2)(j). The Milwaukee County Board may not take any mental health-related actions under the general contract review provisions of § 59.52(31) or the intergovernmental agreements provisions of § 66.0301. See § 59.53(25).

Because the County Board has no authority over mental health contracts, the bid, RFP, purchasing and appeal procedures found in MCO Chs. 32, 44, 56 and 110 will not apply to mental health contracts.

MHB approves the annual state DHS contract. The state submits the contract to MHB, and MHB “shall approve the contract before January 1 of the year in which it takes effect unless the [state] department grants an extension.” § 46.031(2g)(a). MHB “may appropriate funds not used to match state funds under ss. 46.495(1)(d) and 51.423.” § 46.031(2g)(b).

The Community Programs director, with the approval of MHB, provides or contracts for the Community Programs services relating to mental health. § 51.42(6m)(c).

## **IX. Reporting.**

The state is to perform an audit by December 1, 2014, that includes recommendations for the state assuming oversight responsibility for emergency detention services and the psychiatric hospital of the Milwaukee County Mental Health Complex, developing a plan for closing the Milwaukee County Mental Health Complex, and developing a plan for state oversight of a regional facility for institutional, inpatient, crisis and behavioral health services, among other things. Act 203 § 53(4).

MHB reports annually by March 1 to the State, the Executive, the County Board and the public on its programs, improvements and efficiencies. § 51.48(8)(a).

By March 1, 2016, MHB is to report to the state, the Executive and the County Board on alternate funding sources for mental health services and programs. § 51.41.(8)(b).

The county DHS and BHD directors report annually on matters of mental health to MHB. § 46.21(6).

The County Board may request informational reports on mental health matters from the DHS director or the County Executive. § 59.794(3)(b).

Respectfully submitted,

A handwritten signature in blue ink that reads "Paul Bargren". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul Bargren  
Corporation Counsel



## OFFICE OF CORPORATION COUNSEL

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### EXHIBIT C

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TO: County Executive Chris Abele  
County Board Chairman Theodore Lipscomb, Sr.  
Finance & Audit Committee Chairwoman Peggy West  
County Board Supervisors

FROM: Margaret C. Daun, Acting Corporation Counsel  
Colleen A. Foley, Deputy Corporation Counsel  
Paul D. Kuglitch, Deputy Corporation Counsel

CC: Scott A. Manske, Comptroller

RE: Conflicts Created by Act 55 Related to the Scope of Board and County Executive Authority

DATE: March 3, 2017

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### EXECUTIVE SUMMARY

In 2015 Wis. Act 55 (“Act 55”), the state legislature expressly took away certain powers from the Milwaukee County Board of Supervisors and granted those powers to the County Executive. Under Act 55, newly revised section 59.17(2)(b)3. granted to the executive all of the powers under 59.52(6), as well as what appears to be nearly unilateral authority to “s[ell], acqui[re], or lease as landlord or tenant” any non-park county property, including both non-park real estate and personal property.

By doing so, Act 55 also created conflicts among the statutes that define the powers of the executive and board. Put simply, because the subsections of 59.52 define the board’s powers, and because many of those overlap with or are directly related to the powers detailed under subsection 59.52(6), which was delegated by the legislature to the executive, as well as the powers newly granted under the language added to section 59.17(2)(b)3. by Act 55, irreconcilable conflicts arise. For example:

- Section 59.52(6)(b) under Act 55 grants to the executive the power to “make all orders concerning county property.” How is this extremely broad language to be harmonized with other subsections of 59.52, such as 59.52(2)-(4), (14) (addressing county records)? Or 59.52(11) (insurance), 59.52(19) (donations and gifts), 59.52(23) (reference materials), and 59.52(24) (parking on county lands)?
- Section 59.52(6)(b) under Act 55 also grants to the executive the power “to commence and maintain actions.” But how can this be reconciled or harmonized with section 59.52(12),

which grants to the board the power to “[e]xamine and settle ... all claims, demands, or causes of action against the county and issue county orders therefor”?

- Section 59.52(6)(d)2. under Act 55 also appears to grant the county executive authority to issue revenue bonds under 66.0621, while section 66.0621 requires board authority for bonding irrespective of whether the land is parkland.
- When the legislature wrote in 59.17(2)(b)3. that the executive had the power to “s[ell], acqui[re], or lease as landlord or tenant” any non-park county property, did the legislature mean to place this power outside of the limit specified in 59.60(12), which mandates board review of any “contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year”?
- And very broadly, how do these changes and conflicts get harmonized and applied to service contracts – both professional and procurement-based?

These conflicts, among others, discussed in turn at greater length below, cannot be reconciled by the Office of Corporation Counsel (“OCC”) because in doing so, the OCC would be forced to decide the fundamental balance of powers between the board and the executive in Milwaukee County, which in turn would usurp the state legislature’s function. Therefore, the OCC recommends resolution of these conflicts through an opinion from the state Attorney General, a declaratory judgment action, and/or legislation.

## **ANALYSIS**

In the wake of Act 55, the OCC received many requests from departments and/or Supervisors to determine whether contracts require County Board approval and if so, by what mechanism. The OCC responded to these inquiries largely on a one-off basis, (i.e., County Board approval is/is not required for “x” contract) and frequently worked with the Comptroller’s Office to ensure consistent application of its interpretations. In the course of its responses to specific contracting authority inquiries, the OCC also provided many general statements of interpretation regarding the Act 55 changes to Chapter 59, Wis. Stats. These interpretations continue to guide the OCC’s ongoing advice to clients.

Importantly, despite having issued innumerable formal and informal opinions regarding contracting authority since the enactment of Act 55 a little less than two years ago, this office continues to receive such inquiries on a near daily basis for three interrelated reasons.<sup>1</sup> First, prior to the issuance of this opinion, the OCC had not undertaken a comprehensive analysis of post-Act 55 provisions of Chapter 59, sought to expressly harmonize the changes made by Act 55 with other key Chapter 59 subsections, nor expressly considered the impacts of Act 55 on the many different types of contracts the County executes, such as procurement contracts, professional services contracts, non-professional services contracts, as well as sales, acquisitions, and leases of both real

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<sup>1</sup> For example, in January, during the last legislative cycle, Supervisor Dimitrijevic requested an analysis of Chapter 32 of the County’s ordinances related to procurements, as well as professional services contracts, in light of Act 55. See Opinion, March 3, 2017, issued contemporaneously herewith.

and personal property.<sup>2</sup> Second, contracting authority has critical separation of powers implications. Third, key County stakeholders remain confused as to when County Board approval is required.

This opinion reviews the changes made by Act 55 to Chapter 59 (as well as the prior opinions of the OCC), sets forth some of the significant interpretation challenges posed by Act 55's revisions, highlights the critical balance of power issues raised by these interpretation challenges, and ultimately concludes that the OCC cannot offer a comprehensive interpretation of Chapter 59, as amended, because of the conflict of interest these questions raise among the County Executive and County Board. As noted above, this opinion recommends resolution of these interpretation challenges by one or all of the following options: an opinion from the Attorney General's Office, litigation, and/or legislation.

## **I. Rules of Statutory Interpretation**

Courts will construe statutes to determine the legislature's intent. *State ex rel. Kalal v. Circuit Court for Dane Co.*, 2004 WI 58, ¶ 38, 271 Wis. 2d 633, 681 N.W.2d 110. To do so, the courts first look to the plain language of the statute. *Id.*, ¶ 37. Where the plain language cannot resolve a question of interpretation, or where statutes appear to conflict, courts next turn to the context of several statutes and any expression of legislative purpose in the statute. *Id.*, ¶ 49. Furthermore, courts must seek to harmonize statutes and avoid absurd results. *State v. Gould*, 56 Wis. 2d 808, 812, 202 N.W.2d 903 (1973). Additionally, courts presume that legislatures enact new statutes with full knowledge and awareness of prior-existing statutes. *See Storm v. Legion Ins. Co.*, 2003 WI 120, ¶ 29, 265 Wis. 2d 169, 665 N.W.2d 353. And statutes of specific application trump statutes of general application, *Ahrens-Cadillac Oldsmobile, Inc. v. Belongia*, 151 Wis. 2d 763, 766, 445 N.W.2d 744 (Ct. App. 1989). *See also* P. Bargren Op., May 16, 2016, Exhibit A (attached as Ex. 10).

## **II. Act 55**

### **A. Background**

Before beginning the analysis of the changes made by Act 55 (and its predecessor, 2013 Wis. Act 14 ("Act 14")) to the balance of power in Milwaukee County, it is important to note the overarching statutory structure that defines, limits, and in some instances, specifies in detail the powers of the county's legislative and executive branches of government. Subchapter IV of Chapter 59, section 59.17, specifies the county executive's powers, duties, and authorities. It states that the executive "shall be the chief executive officer of the county. The county executive shall take care that every county ordinance and state or federal law is observed, enforced and

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<sup>2</sup> Black's Law Dictionary, 7th ed. (1999) at 1233, defines personal property as, "[a]ny movable or intangible thing that is subject to ownership and not classified as real property." In short, personal property is anything that can be owned or used that is not real estate, including both tangible and intangible things. *See* Wis. Stat. §§ 990.01(27); 70.03; 70.04; *In re Estate of Larson*, 196 Wis. 2d 231, 235, 538 N.W.2d 802, 803 (Ct. App. 1995) ("bank deposits, checks, annuities and trust agreements are all ... intangible personal property. . . . This conclusion is consistent with the law defining tangible and intangible personal property in other areas of the law, as in construing intangible personal property to include cash."); *Acharya v. Carroll*, 152 Wis. 2d 330, 335-36, 448 N.W.2d 275, 278 (Ct. App. 1989).

administered” and further specifies a litany of additional powers, some with limitations, others not, some shared with the board, others not, as discussed in more detail below. Wis. Stat. § 59.17(2). For example, the county executive appoints and supervises department heads, establishes departments, signs contracts, introduces proposed ordinances and resolutions for consideration by the board, hires and supervises the staff of his office, and exercises a veto right over legislation. *See* Wis. Stat. §§ 59.17(2)(b) 2.-7.; 59.17(6).

Subchapter V of Chapter 59, sections 59.51 and 59.52, define the county board’s powers, duties, and authorities. Subsection (1) of section 59.51 states that the board “shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive.” This subsection further states that “these powers shall be broadly and liberally construed and limited only by express language.” Section 59.52 then provides an exhaustive listing of powers and duties, some limited and others not, as discussed further below. These span everything from record retention to insurance to establishment of a civil service system and beyond.

#### B. Act 14

Two years before the enactment of Act 55, in 2013, the state legislature effected a significant shift in the balance of powers between the executive and the board in Milwaukee County. *See* Act 14. While portions of Act 14 are currently under litigation regarding exactly to what degree and in what precise manner the legislature shifted that balance, *see Lipscomb v. Abele*, Milwaukee County Circuit Court Case No. 2016-CV-2888, Act 14 *generally* decreased the board’s powers and increased the executive’s powers. For example, the executive’s power to control county departments and their day-to-day operations increased, *see* Act 14, § 10 (59.17(2)(b)1.), § 11 (59.17(2)(b)2.), § 33 (59.794(3)(a)) (attached as Ex. 1). *But see Lipscomb v. Abele, supra* (debating extent of changes particularly regarding control over compensation).<sup>3</sup> Moreover, Act 14 decreased board member salaries and benefits, as well as their term of office. *See* Ex. 1, §§ 3-7, 9, 23. Notably, the state legislature applied these changes only to Milwaukee County, and no other Wisconsin County. *See* n.5, p. 5, *infra*.

Critical to the instant analysis, Act 14 granted the executive concurrent authority with the board over contracts to acquire, lease, rent, or sell county property, both real and personal. *See* Ex. 1, § 2 (59.06(2)), § 11 (59.17(2)(b)3.), § 15 (59.52(6)(a)). *See also* P. Bargren Op. Oct. 16, 2013 at 1 (attached as Ex. 2). Specifically, Act 14 stated that in Milwaukee County, the executive would now have the power to:

[e]xercise the authority under s. 59.52(6)(a) that would otherwise be exercised by a county board. With regard to the sale or lease of property, the county executive’s action must be consistent with established county board policy and must be approved by the county board to take effect. The county board may only approve or reject the contract as negotiated by the county executive.

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<sup>3</sup> Act 14 also shifted power to the executive regarding child and spousal support programs, Ex. 1, § 17 (59.53(5)(a)); work centers, § 20 (59.53(20)); relief programs, § 21 (59.53(21)); and harbor facilities, § 27 (59.70(8m)).

See Ex. 1, § 11 (59.17(2)(b)3). Subsection 59.52(6)(a) enumerated these co-extensive powers under Act 14 to include the power to “take and hold land ... and acquire, lease or rent property, real and personal, for public uses or purposes of any nature... .” Ex. 1, § 15. Importantly, however, Act 14 also limited the board’s role in the consideration of a property transaction to an up or down vote on the contract, without amendment. See Ex. 2, P. Bargren Op. Oct. 16, 2013 at 1.

Act 14 also created section 59.52(31), applicable only to Milwaukee County, which established the exclusive jurisdiction of the board’s finance committee over all contracts, whether property-related or not, and set forth different board contract review processes depending upon the dollar threshold involved. Ex. 1, § 16.

### C. Act 55

Act 55 continued the legislature’s shifting of certain powers from the board to the executive in Milwaukee County. See generally Act 55 (attached as Ex. 3).<sup>4</sup> See also P. Bargren Op., July 8, 2015 at p. 2 (attached as Ex. 4) (“[Act 55] would complete a transition that began with Act 14 two years ago.”) Relevant here, Act 55 made the following changes (insertions noted by underscore and deletions by ~~strike through~~) to the subsections of Wisconsin statute section 59.17 as noted below (emphasis in ***bolded italics*** added).

(2) The duties and powers of the county executive shall be, without limitation because of enumeration, to:

(b) In any county with a population of 750,000<sup>5</sup> or more:

3. ***Exercise the authority under 59.52(6)(a) that would otherwise be exercised by the county board***, except that the county board may continue to exercise the authority under s. 59.52(6) with regard to land zoned as park... . With regard to the sale ~~or~~ acquisition, or lease as landlord or tenant of property, other than certain park land as described in this subdivision, the county executive’s action ~~must need not~~ be consistent with established county board policy and ~~must be approved by~~ ***may take effect without submission to or approval by the county board to take effect.*** ~~The county board may only approve or reject the contract as negotiated by the county executive. ... Before the county executive’s sale of county land may take effect, [the county executive and either the comptroller or an individual selected by the executive committee under s. 59.794(1)(d) must certify in writing that they] believe the sale is in the best interests of the county.~~

Ex. 3, §§ 1907m, 1907n.

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<sup>4</sup> 2013 Wis. Act 203, enacted in April of 2014, further tilted the balance of power by creating the Milwaukee County Mental Health Board to control mental health services in the county and in doing so, removed the County Board’s authority over mental health services.

<sup>5</sup> At the time of enactment, Milwaukee County was – and remains – the only Wisconsin County with a population of 750,000 or more. This fact was well known to the legislature and the governor at that time and thus, it is not a matter of reasonable debate that the changes were intended only to impact Milwaukee County.

In addition, Act 55 also amended section 59.52(31) and created subsection (e), which states that section 59.52(31) (described above) shall not apply to any transaction covered by section 59.17(2)(b)3. See Ex. 3, § 1914h.

Critically, the powers enumerated under section 59.52(6), now vested in the County Executive with respect to non-parkland, are vast. It states (emphasis in ***bolded italics*** added):

(6) PROPERTY. Except as provided in s. 59.17(2)(b)3., the board may:

(a) How acquired; purposes. ***Take and hold land*** acquired under ch. 75 and ***acquire, lease or rent property, real and personal, for public uses or purposes of any nature***, including without limitation acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal for county institutions, lime pits for operation under s. 59.70 (24), equipment for clearing and draining land and controlling weeds for operation under s. 59.70 (18), ambulances, acquisition and transfer of real property to the state for new collegiate institutions or research facilities, and ***for transfer to the state for state parks*** and for the uses and purposes specified in s. 23.09 (2) (d).

(b) Control; actions. Make ***all orders concerning county property*** and ***commence and maintain actions*** to protect the interests of the county.

(c) Transfers. Direct the clerk to ***lease, sell or convey or contract to sell or convey any county property***, not donated and required to be held for a special purpose, on terms that the board approves. In addition, any county property may be leased, rented or transferred to the United States, the state, any other county within the state or any municipality or school district within the county. Oil, gas and mineral rights may be reserved and leased or transferred separately.

(d) Construction, maintenance and financing of county-owned buildings and ***public works projects***.  
1. ***Construct, purchase, acquire, lease, develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities hereinafter in this subsection referred to as "projects"***, including without limitation because of enumeration swimming pools, stadiums, golf courses, tennis courts, parks, playgrounds, bathing beaches, bathhouses and other recreational facilities, exhibition halls, convention facilities, convention complexes, including indoor recreational facilities, dams in county lands, garbage incinerators, courthouses, jails, schools, hospitals and facilities for medical education use in conjunction with such hospitals, homes for the aged or indigent, regional projects, sewage disposal plants and systems, ***and including all property, real and personal, pertinent or necessary for such purposes***.

2. ***Finance such projects, including necessary sites, by the issuance of revenue bonds*** under s. 66.0621... .

3. ***Operate or lease such projects in their entirety or in part, and impose fees or charges for the use of or admission to such projects***. Such projects may include space designed for leasing to others if such space is incidental to the purposes thereof.

(e) Leases to department of natural resources. ***Lease lands owned by the county to the department of natural resources*** for game management purposes. ...

Finally, Act 55 did not amend section 59.60(12), which addresses multi-year contracts. It states, in its last sentence, that “[t]he board shall make or approve by resolution each contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year.”



#### D. Prior Opinions and Preliminary Interpretations

As noted above, the OCC has issued a multitude of opinions considering the ramifications of both Act 14 and Act 55. Although nearly all of these opinions focused on the consideration of a particular contract, the variance among them as to general interpretations of the relevant statutes following Act 55 is small, with one notable exception discussed in the next section. These consistent interpretations, coupled with the plain language of the statutes, can be synthesized into a handful of key preliminary interpretations.

1. Act 55 took all of the powers listed in section 59.52(6) from the county board and gave them to the county executive except as to parkland and except as noted in points 4, 5, and 6 below.
  - “[Act 55] delegate[s] to the Executive all of the power that a county board normally exercises under 59.52(6)...” Ex. 4, p. 2.
  - “By adopting § 59.17(2)(b)3, the Legislature gave the Milwaukee County Executive specific authority over all of the § 59.52(6) functions as to non-park Milwaukee County property. This was a clear delegation of power by the Legislature to the Executive.” P. Bargren Op. Oct. 7, 2015, p. 1 (attached as Ex. 6).
  - “The entire point of § 59.17(2)(b)3 was to allow the Executive to take action to ‘operate and maintain’ (and lease and sell) **without** board approval. The legislature’s intent to give that authority solely to the Executive needs to be seen as trumping the existing board/executive procedure.” *Id.*, p. 2.
  - “Act 55 . . . gives the County Executive sole authority over county land that is not zoned as a park, removing such authority from the County Board. Wis. Stat. 59.17(2)(b)3. This gives the Executive sole authority to lease space – such as vendor space – at [General Mitchell International Airport] without County Board approval.” P. Bargren Op., Nov. 11, 2015, p. 1 (attached as Ex. 7). *See also* P. Bargren Op., Dec. 23, 2015 (attached as Ex. 8).
2. These powers apply not just to non-park real estate, but **all** county property, including personal property.<sup>6</sup>
  - “[Act 55] delegate[s] to the Executive all of the power that a County Board normally exercises under § 59.52(6), Stats., concerning county real estate and personal property.” Ex. 4, p. 2.
  - “By adopting § 59.17(2)(b)3, the Legislature gave the Milwaukee County Executive specific authority over all of the § 59.52(6) functions as to non-park Milwaukee County property.” Ex. 7, p. 2.

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<sup>6</sup> Although Act 55 raised many questions and conflicts, as this opinion explores, the delegation of power by the legislature from the board to the county executive over non-park property, inclusive of both non-park real estate and **personal** property, cannot be reasonably disputed. Most importantly, the precise “personal property” or the generic “property” is used throughout section 59.52(6), when elsewhere in subsection (6) and Chapter 59, the precise “land” is used. Based on the principles of statutory construction, discussed above in Section I, *see supra* p. 3, the plain meaning must be given to these terms and thus, the county executive’s authority under Act 55 indisputably applies to both non-park real estate **and** personal property, as detailed further below. *See also* n.8, p. 11, *infra*.

3. According to subsection (e) of section 59.52(31), its required board and committee review processes ***do not*** apply to any of the executive's powers under section 59.52(6), regardless of contract value.
4. Because section 59.60(12) (requiring board approval of multi-year contracts) was not amended in any way by Act 55, it arguably applies to all of the executive's powers under 59.52(6), ***except*** sales, leases, or acquisitions of property under the plain language of the statute. The reason section 59.60(12) does not apply to property sales, leases, or acquisitions is because later-enacted section 59.17(2)(b)3. expressly states that those functions can be executed by the county executive, except as to parkland, "without submission to or approval by the county board" and without complying with "established county board policy." Although in conflict, section 59.17(2)(b)3. was a later-enacted statute, with a more specific reallocation of power by the legislature from the board to the executive. To give meaning to the legislature's intent, section 59.17(2)(b)3. must trump section 59.60(12). *But see infra* p. 10, Section III.2. Therefore, under this interpretation, the executive must seek county board approval for any multi-year contract except multi-year or single-year contracts for property sales, leases, or acquisitions, which the executive controls (subject to points 5 and 6 below). Note also that this provision of section 59.17(2)(b)3. concerns a sale of "property" – meaning either real estate or personal property. Since elsewhere in 59.17(2)(b)3. the legislature differentiated between land and other property, to give full meaning to the words of the statute and the intent of the legislature, this provision must be interpreted as applying to both real estate and personal property.<sup>7</sup> *But see infra* p. 10, Section III.1.
5. The executive's "sale of county land" requires written certification that the sale is in the best interest of the county by either the comptroller or a representative from the executive council (as well as the executive himself) under 59.17(2)(b)3. Note that by its terms, this provision in section 59.17(2)(b)3. applies only to "***sales***" of "***land***" and does not apply to leases or acquisitions or to property other than land.
6. The executive's authority and power is necessarily subject to funding made available by the board through the budget process, bonding, or otherwise.
  - Ex. 4, p. 2.
  - "Even where the Executive is exercising authority under § 59.17(2)(b)3 over non-parkland without Board consideration, the Executive still must have budget

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<sup>7</sup> As to whether a contract is considered to be encumbering future fiscal years and/or a multi-year contract and potentially under the purview of section 59.60(12), the OCC looks beyond any labels or other stylings of a contract to assess the likely and intended term of the contract. Thus, a contract that automatically renews would be considered a multi-year contract. If a contract only has an option to renew (whether it requires the consent of both parties or mere notice by one party), so long as the initial term and the renewal term was each a year or less, it would not be considered a multi-year contract. After a contract is in effect, an option to renew may or may not itself be considered a multi-year contract, depending on the length of the option term. The OCC strongly advises against drafting contracts with terms that provide for "automatic" renewals contingent upon sufficient appropriations because this complicates contract administration as it may become unclear whether dollars appropriated to the relevant department were intended to cover a particular contract or were for other purposes. Finally, an otherwise multi-year contract is not somehow arguably "transformed" into a single-year contract for purposes of section 59.60(12) simply because an option to terminate the contract exists. Exceptions to these guidelines may be considered on an ad hoc basis.

authorization if spending is required. For example, the Executive would need funding through an appropriate departmental budget before he could issue a contract to operate or maintain a non-parks facility. That funding would be part of the Board's annual budget review and approval process." Ex. 10, pp. 2-3.

### III. The Interpretation Challenges Posed by Act 55 Cannot be Resolved by the OCC

Prior Corporation Counsel Bargren noted key canons of statutory construction in an earlier opinion considering the interpretation of Act 55 issued on May 16, 2016. *See* Ex. 10, p. 5. In it, he stated:

The express grants of authority to the Executive in Act 55 and § 59.17(2)(b)3 supersede the more general grants of authority to the Board in certain areas for the following reasons.

First, the express and specific delegation of authority by the Legislature in Act 55 came after provisions like § 59.58 regarding airports were already on the books. The Legislature expressly granted the [executive] broad authority to exercise all powers listed in § 59.52(6). If the Legislature had meant to exclude use of that authority over GMIA or other county property, it would have so specified, just as it excluded the Executive's authority to control land that is zoned as a park.

Second, historically and in practice, the powers set out in § 59.52(6) have been exercised by the County Board in connection with and in addition to any enabling legislation. . . . [t]he County is authorized to [fulfill a particular function or service by a particular enabling statute], but the County's many specific options to exercise control over the operation, use and disposition [and other relevant powers related thereto] of [a particular function or service] are set out in § 59.52(6). In Milwaukee County, that authority is now delegated to the Executive by Act 55 and § 59.17(2)(b)3.

Third, although [a statute] says "the **board** may ... operate and maintain [x, y, z]," any board action to do so is necessarily subject to approval or veto by the Executive. The entire point of § 59.17(2)(b)3 was to allow the Executive to take action to "operate and maintain" (and lease and sell) [among other authorities and actions] **without** board approval. The legislature's intent to give that authority solely to the Executive needs to be seen as trumping the existing board/executive procedure.

Finally, I note that the legislature [sic] delegation of authority to [sic] Executive in this regard is consistent with § 59.51(1), Stats., which states as relevant here:

The board of each county shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive . . .

The enactment of § 59.17(2)(b)3 is such an enactment of the legislature.

In short, consistent with the longstanding principles of statutory construction noted in Section I, *supra*, prior Corporation Counsel Bargren took the view that the legislature's unequivocal re-delegation of authority from the board and to the executive in section 59.17(2)(b)3. must trump other, earlier statutes that appear to delegate powers to the board in conflict with any of the powers enumerated in section 59.52(6) and now delegated to the executive under section 59.17(2)(b)3.

However, applying that approach (as well as the preliminary interpretations noted in Section II.D., *supra*) uniformly and consistently among even a small subset of the key subsections of the statutes at issue leads to absurd results and makes harmonizing the statutes nearly impossible, thereby violating other principles of statutory construction noted previously. We describe a number of the interpretation challenges below:

1. Sections 59.17(2)(b)3. and 59.52(6) use the terms land, personal property, and property. Is it correct to interpret each use as deliberate (i.e., use of “property” means both real and personal property? And the use of “land,” excludes personal property?). As noted in Section II.D.4.-5., *supra*, this key question of interpretation has important implications. For example, one clause of section 59.17(2)(b)3. states that “[w]ith regard to the sale, acquisition, or lease ... of *property*, other than certain park *land*...” – should the reference to “land” be imputed to the earlier use of the word “property” such that it is interpreted as “real property”? Or, does it mean what it says – namely that property includes both real property and personal property as to the county executive’s power to buy, sell, or lease? Regardless and as noted above in Section II.D.4., *supra*, when the legislature wrote in 59.17(2)(b)3. that the executive had the power to “s[ell], acqui[re], or lease as landlord or tenant” any non-park county “property,” did the legislature mean to place this power outside of the limit specified in 59.60(12), which mandates board review of any “contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or more than one fiscal year”? See also n.9, p. 12, *infra*.

2. As discussed above, in enacting section 59.17(2)(b)3., the legislature took away the board’s powers under 59.52(6) and gave them to the executive. But powers enumerated in subsections of section 59.52(6) appear to conflict with other grants of authority or power to the board under other subsections of 59.52. In short, subsection (6) covers nearly every conceivable power related to property. See Ex. 10, p. 2 (“comprehensive list of powers”); see also P. Bargren Op., Jul. 17, 2015, pp. 1-2 (“bundle of rights” ... “full panoply of rights”) (attached as Ex. 5). Of particular note, section 59.52(6)(b) includes the incredibly broad power to “[m]ake all orders concerning county property.” This would include non-park personal and real property. How is this reconciled with many of the other subsections of section 59.52? For instance:

- a. Section 59.52(2)-(4), (14) addressing records of the county. Records are property. So does the board control records, or the executive, or both?
- b. Section 59.52(11) addresses insurance for county property – but again, it is about property. Is that covered by 59.52(6)(b)?
- c. Section 59.52(19) specifies that the board may accept donations, gifts, or grants for a public purpose – again, these things are all property and thus subject to section 59.52(6).
- d. And the same question applies to sections 59.52(23) and (24).

3. Equally important, section 59.52(9) provides that the board may appoint a purchasing agent. But purchasing functions (at least of non-park property) would be arguably covered by section 59.52(6). So, who controls purchasing? For example, in Milwaukee County, there is no purchasing agent. Instead, the County uses a Procurement Director, appointed by the Director of the Department of Administrative Services. So, what does this mean for the County’s procurement process under Chapter 32 of the County’s ordinances? Even if it was the legislature’s intent to

place the procurement processes within the executive's discretion, was it also the legislature's intent that such contracts would not be covered by sections 59.60(12) (regarding appropriations from future years) and/or 59.52(31) (regarding contracts at certain dollar thresholds)?

Similarly, what does Act 55 mean for RFP processes and professional service contracts? Is the key whether these contracts somehow relate to property (in which case, the executive controls)? Arguably, most contracts could be viewed as relating to non-park property in some way – whether that is real estate or personal property. Take as examples: a services contract to provide physicians and nurses at the County Jail – is the property the jail? Or a contract to hire an outside law firm to assist DAS on a non-parkland deal – much more clearly related to property. Or what about a contract with an actuary to assist the comptroller's office – are the pension assets or county tax revenues the relevant non-park property? And what does this mean for Chapter 56 of the County's ordinances? Even if it was the legislature's intent to place professional services contracts and RFP processes within the executive's discretion, was it also the legislature's intent to also place such contracts outside the reach of sections 59.60(12) and/or 59.52(31)?

Or, are all *services* contracts – both professional and general – still subject to section 59.52(31), even if they are directly related to non-park real estate or personal property, while procurement contracts or RFPs for actual *property* – whether real or personal – are now outside of the reach of both sections 59.60(12) and 59.52(31) – rendering the distinctions between Chapters 32 and 56 of the County's ordinances irrelevant? Or, must some case-by-case analysis be undertaken to determine if a given services contract is sufficiently related to non-park property to fall under the rubric of section 59.17(2)(b)3. and outside of the county board's oversight authorities under sections 59.52(31) and 59.60(12)?<sup>8</sup>

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<sup>8</sup> A prior OCC opinion provides attenuated support for this approach. In an opinion dated January 26, 2016, prior Deputy Corporation Counsel Mark Grady exclusively focused on section 59.52(6)(d)1., and did not consider any other subsection of 59.52(6), nor any of the actual language of section 59.17(2)(b)3. See M. Grady Op., Jan. 26, 2016, pp. 1-4 (attached as Ex. 9). Deputy Grady thereby provided a too narrowly drawn opinion as to the executive's powers under Act 55, concluding – despite no statutory language in Chapter 59 to this effect – that for a contract to fall under the executive's authority per section 59.17(2)(b)3., the contract must be “required in order to render a building, structure, or facility capable of functioning as a building, structure or facility, as opposed to those things required to operate the programs contained within the facility.” See Ex. 9, pp. 1, 4. Aside from being an untenable concept, requiring legal opinions as to nearly each and every contract, it can be concluded that the opinion is inaccurate for three additional reasons. First, the gravamen of the analysis attempts to answer the question of what it means to “operate” a “facility” – a concept which appears only in section 59.52(6)(d)1. Second and related, the plain language of nearly every other subsection of 59.52(6) includes powers much broader than the operation of buildings and facilities, and expressly incorporates powers related to non-park personal property throughout subsection (6) (Deputy Grady, however, states that 59.17(2)(b)3. conferred only “general real estate authority,” see Ex. 9, p. 4; n.6, p.7, *supra*). Third, the opinion has led to “absurd” results (i.e., county board approval is not required for leasing of space at the airport or the zoo, but it is required to permit mold-o-ramas or stroller rentals at the zoo; it is not required for concession operations at the airport, but it is required for concession operations at the zoo). See Ex. 9, p. 4; Ex. 8, p. 1 (seeming to place emphasis on the fact that the concessions agreement was styled as a lease. However, similar to the analysis of whether a contract is multi-year, see n.7, *supra*, a determination of whether board approval is required should not hinge on whether the agreement is styled as a lease of café space or a services agreement to provide food concessions). Notwithstanding the foregoing, at this time, when a services contract is under consideration, it is appropriate to undertake a review of whether that services contract is sufficiently related to non-park county property – either personal property or real estate – to bring it under the aegis of the executive's powers under sections 59.17(2)(b)3. and 59.52(6). See Opinion, March 3, 2017, issued contemporaneously herewith.

And what about appeals of procurement or other contracting decisions – does Milwaukee County Ordinance section 110 apply or Chapter 68, Wis. Stats.? And who ultimately controls these processes – the executive or the board? And if the underlying contract is outside of the county board’s authority, then why would Milwaukee County Ordinance section 110 apply?

Critically, the Legislature considered – and rejected – two additional amendments to Act 55 that would have definitively resolved all of the questions posed in this item 3 (but would not resolve the persistent conflict between sections 59.60(12) and 59.17(2)(b)3., *see* point 2, *supra*). Specifically, the first rejected change would have created a new section 59.17(2)(d) that expressly granted the county executive sole authority over procurements, all forms of contracting, RFPs, as well as all administrative reviews of contract awards. *See* Senate Substitute Amendment 1 (SSA1) to Senate Bill 21 (attached as Ex. 11) (available at [http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/ssa1\\_sb21.pdf](http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/ssa1_sb21.pdf)), as amended by Senate Amendment 2 (SA2) to SSA1 (attached as Ex. 12) (available at: [http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/sa2\\_ssa1\\_sb21](http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/sa2_ssa1_sb21)). *See* Ex. 11, p. 585 at ll. 1-16. In addition, the second rejected amendment would have deleted subsections (b) and (c), and made significant changes to subsection (d) of section 59.52(31), which would have left no question that there were no applicable dollar thresholds that would trigger board or committee review of certain contracts. *See* Ex. 11, pp. 589-590, ll. 20-2.

On the one hand, it can be argued that in rejecting these changes, the legislature intended to preserve for the board some of these powers and oversight privileges. On the other hand, it could also be argued that the legislature thought these provisions were surplusage given the broad authorities granted in sections 59.17(2)(b)3. and 59.52(6).

These interpretation challenges are by no means exhaustive.<sup>9</sup>

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<sup>9</sup> Section 59.60(12) requiring board review of multi-year contracts conflicts with section 59.17(2)(b)3., which specifies that there shall be no board review for property sales, acquisitions, and leases. *See supra*, at 8, § D.4. Leases, by definition, are typically of a term greater than one year. And certainly, sale and purchase transactions – particularly real estate deals – often do have multi-year deal structures. Former Corporation Counsel Bargren also seemed to encounter difficulty reconciling this issue. In his May 16, 2016 opinion, he stated, “[c]ontract funding required over more than [one] budget year is also subject to Board approval, even for non-parks land,” citing Wis. Stat. § 59.60(12). Ex. 10, p. 3. And in the very next paragraph, he wrote this: “Act 55 does not provide for consideration of [non-park land] sales by [a county] Committee or the Board.” *See id.* While a sale obviously does not involve expenditures over more than one year, tellingly, Corporation Counsel Bargren did not address the fact that not only does Act 55 appear to take non-park land *sales* out of the County Board’s purview, as stated above, it also appears to do this as to “*acquisition[s], or lease[s], as landlord or tenant.*” Wis. Stat. § 59.17(2)(b)3 (emphasis added).

Subsection 59.52(6)(b) also includes the power to “commence and maintain actions to protect the interests of the county.” It does not limit those interests expressly to property interests. But should that limitation be read into the statute? And does “maintain” include the power to settle any action? Or only those actions where the county is the plaintiff? Can this section be reconciled with section 59.52(12), if 59.52(12) is interpreted as granting the board only the powers to resolve and settle claims against the county (i.e., county as defendant)? What about a scenario where the county is both a plaintiff and a defendant in an action (i.e., third-party actions)? Would this encourage the executive to “rush” to court and press a declaratory judgment action so he could “commence and maintain” the action? And this provision also would conflict with Milwaukee County Ordinance section 1.11(c)(4)2.(b), which states that the Judiciary Committee must approve the commencement of any action (excepting emergency injunctive relief when brought by the executive) where the amount claimed exceeds or the rights sought to be declared have a potential fiscal effect in excess of ten thousand dollars. [Footnote continued on next page.]

The above discussion and analysis leads to three conclusions. First, Acts 14 and 55 created material and irreconcilable conflicts among important state statutes which delineate identical or substantially similar powers, authorities, and duties among the Milwaukee County Board of Supervisors and the County Executive. Prior to these enactments, it did not matter that statutes overlapped and addressed the same or similar powers, since they all delegated the particular authority at issue to the board. Now, however, these conflicts have reached a critical and increasingly unmanageable juncture.

Second and related, previous attempts to interpret the statutes have led to (a) a variety of unintended consequences for county contracting practices (e.g., board review of non-essential and ancillary contracts like the mold-o-rama contract at the zoo, inconsistencies among similar contracts, artificial styling of contracts as “leases,” and/or use of unilateral renewal options, among other impacts); (b) an undesirable level of uncertainty amongst county departments and policymakers; (c) continuing disagreements between the branches of government about contracting authority; and (d) near daily ad hoc inquiries to the OCC.

Third and finally, because of these irreconcilable contradictions among key statutory provisions and the critical powers implicated by the interpretation of Act 55, resolution of this fundamental balance of power must be determined by an external entity.

#### **IV. Recommendations**

Given all of the foregoing, the OCC therefore respectfully recommends that, either separately or jointly, the County Board and County Executive attempt to achieve clarification of the issues highlighted in this opinion by one or all of the following methods: (a) an opinion from the state Attorney General; (b) legislative change; or (c) a declaratory judgment action.

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Section 59.52(6)(d)2. appears to grant the county executive authority to issue revenue bonds under section 66.0621. However, section 66.0621 appears to require board authority for bonding regardless of the nature of the underlying land (i.e., non-park vs. park). So which governs?

Section 59.17(2)(b)3., as well as 59.52(6), also appear to conflict with section 27.05(3)-(4), which specifies that the Parks Director can acquire land for parks purposes, but only with board approval. Which governs?

Under section 59.52(6)(e), the executive appears to be able to lease land to the DNR, but his powers apply only to non-parkland, so this seems to be a nullity or at best, a non-sequitur.

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# State of Wisconsin



2013 Assembly Bill 85

Date of enactment: **May 31, 2013**  
Date of publication\*: **June 1, 2013**

## 2013 WISCONSIN ACT 14

**AN ACT** to repeal 59.79 (6), 59.79 (11), 59.79 (12), 59.79 (13) and 806.155; to renumber and amend 59.10 (2) (c) and 59.17 (2) (b); to amend 59.03 (2) (a), 59.06 (2), 59.10 (2) (b), 59.12 (2), 59.17 (2) (bm) 1. (intro.), 59.17 (2) (bm) 2., 59.17 (2) (br), 59.22 (2) (a), 59.22 (3), 59.52 (6) (a), 59.53 (5) (a), 59.53 (6) (a) 1., 59.53 (6) (a) 2., 59.53 (20), 59.53 (21), 59.56 (11), 59.60 (7), 59.698, 59.70 (7), 59.70 (8m), 59.70 (12) (a), 59.875 (title), 66.0301 (2) and 289.33 (3) (d); and to create 59.10 (2) (c) 2., 59.10 (2) (c) 3., 59.10 (2) (c) 4., 59.11 (2) (c), 59.17 (2) (b) 2. to 6., 59.52 (31), 59.52 (32), 59.53 (24), 59.60 (7e), 59.794, 59.875 (3) and 111.70 (1p) of the statutes; relating to: changing the compensation structure by which a Milwaukee County supervisor may be paid, changing the term length of a Milwaukee County supervisor, affecting the right of an annuitant under the Milwaukee County Employee's Retirement System to be rehired by Milwaukee County, limiting the authority of Milwaukee County to enter into certain intergovernmental agreements, removing and clarifying some authority of the Milwaukee County board, increasing and clarifying the authority of the Milwaukee County executive, deleting obsolete statutory references, and requiring a referendum.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 59.03 (2) (a) of the statutes is amended to read:

59.03 (2) (a) ~~Except Subject to s. 59.794 (2) and (3) and except~~ as elsewhere specifically provided in these statutes, the board of any county is vested with all powers of a local, legislative and administrative character, including without limitation because of enumeration, the subject matter of water, sewers, streets and highways, fire, police, and health, and to carry out these powers in districts which it may create for different purposes, or throughout the county, and for such purposes to levy county taxes, to issue bonds, assessment certificates and improvement bonds, or any other evidence of indebtedness. The powers hereby conferred may be exercised by the board in any municipality, or part thereof located in

the county upon the request of any such municipality, evidenced by a resolution adopted by a majority vote of the members-elect of its governing body, designating the particular function, duty or act, and the terms, if any, upon which the powers shall be exercised by the board or by a similar resolution adopted by direct legislation in the municipality in the manner provided in s. 9.20. The resolution shall further provide whether the authority or function is to be exercised exclusively by the county or jointly by the county and the municipality, and shall also find that the exercise of such power by the county would be in the public interest. Upon the receipt of the resolution, the board may, by a resolution adopted by a majority vote of its membership, elect to assume the exercise of the function, upon the terms and conditions set forth in the resolution presented by the municipality.

**SECTION 2.** 59.06 (2) of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."



59.06 (2) EFFECT OF TRANSFER. All deeds, contracts and agreements made on behalf of the county under the directions of the board under s. 59.52 (6), or by a county executive acting under s. 59.17 (2) (b) 3., when signed and acknowledged by the clerk and the county seal is attached, are valid and binding on the county to the extent of the terms of the instrument and the right, title and interest which the county has in the property.

SECTION 3. 59.10 (2) (b) of the statutes is amended to read:

59.10 (2) (b) Election; term. Supervisors For an election that is held before 2016, supervisors shall be elected for 4-year terms at the election to be held on the first Tuesday in April next preceding the expiration of their respective terms, and shall take office on the 3rd Monday in April following their election. For an election that is held in 2016 and thereafter, supervisors shall be elected for 2-year terms at the election to be held on the first Tuesday in April next preceding the expiration of their respective terms, and shall take office on the 3rd Monday in April following their election.

SECTION 4. 59.10 (2) (c) of the statutes is renumbered 59.10 (2) (c) 1. and amended to read:

59.10 (2) (c) 1. Each supervisor shall be paid by the county an annual salary set by the board. The board may provide additional compensation for the chairperson, such that his or her salary may be an amount of up to 150 percent of the salary of a supervisor, and for the chairperson of the board's finance committee, such that his or her salary may be an amount of up to 125 percent of the salary of a supervisor. Beginning with the term that commences in April 2016, the total dollar value of the annual salary and benefits that may be paid to a supervisor, other than the board chairperson and finance committee chairperson, may not exceed the annual per capita income of Milwaukee County as most recently determined by the U.S. bureau of the census and may be increased for a new term as provided in subs. 2. and 3., subject to the limit specified in subd. 4. Section 66.0505 applies to this paragraph.

SECTION 5. 59.10 (2) (c) 2. of the statutes is created to read:

59.10 (2) (c) 2. The board may increase the salary specified in subd. 1., or as otherwise adjusted under this paragraph, by an amount that does not exceed the percentage increase in the U.S. consumer price index for all urban consumers, U.S. city average, for the period between the time that a supervisor's salary was last set under subd. 1. or by the board, and the year before the year in which the salary increase is to take effect.

SECTION 6. 59.10 (2) (c) 3. of the statutes is created to read:

59.10 (2) (c) 3. The board may increase the salary specified in subd. 1., or as otherwise adjusted under this paragraph, by an amount that exceeds the percentage increase in the U.S. consumer price index for all urban consumers, U.S. city average, for the period between the

time that a supervisor's salary was last set under subd. 1. or by the board, and the year before the year in which the salary increase is to take effect, except that such an increase may not take effect unless it is ratified by a majority vote of the electors in the county voting in a referendum on the proposed salary increase.

SECTION 7. 59.10 (2) (c) 4. of the statutes is created to read:

59.10 (2) (c) 4. A supervisor may not receive any other benefits or compensation, including health insurance and pension benefits, not specifically authorized or required by law. The maximum total dollar value of the salary and benefits that a supervisor, other than the chairperson of the board and the chairperson of the finance committee, receives in any year may not exceed the annual per capita income of Milwaukee County as most recently determined by the U.S. bureau of the census.

SECTION 8. 59.11 (2) (c) of the statutes is created to read:

59.11 (2) (c) In a county with a population of 750,000 or more, upon a written request of the county executive delivered to the clerk which must have been approved by the county board chairperson, specifying the time and place of the meeting. The time shall not be less than 48 hours from the delivery of the request. Upon receiving the request and the approval of the county board chairperson, the clerk shall immediately mail to each supervisor notice of the time and place of the meeting. Any special meeting may be adjourned by a vote of a majority of all the supervisors.

SECTION 9. 59.12 (2) of the statutes is amended to read:

59.12 (2) The board at the time of the election of the chairperson shall also elect a member vice chairperson, for the same term, who in case of the absence or disability of the chairperson shall perform the chairperson's duties. The board at the time of the election of the chairperson may also elect a member 2nd vice chairperson, for the same term, who in case of the absence or disability of the chairperson and vice chairperson shall perform the duties of the chairperson. The Except for the board of a county with a population of 750,000 or more, the board may provide for the payment of additional compensation to the vice chairpersons.

SECTION 10. 59.17 (2) (b) of the statutes is renumbered 59.17 (2) (b) (intro.) and amended to read:

59.17 (2) (b) (intro.) In any county with a population of ~~500,000~~ 750,000 or more, ~~appoint:~~

1. Appoint and supervise the heads of all departments except where the statutes provide that the appointment shall be made by a board or commission or by other elected officers. Notwithstanding any statutory provision that a board or commission or the county board or county board chairperson appoint a department head, except ss. 17.21 and 59.47 (3), the county executive shall appoint and supervise the department head. ~~Notwith-~~

~~standing any~~ Except for a statutory provision which specifies that a board or commission or the county board shall supervise the administration of a department, the department head shall supervise the administration of the department county executive shall administer, supervise, and direct all county departments, including any person who negotiates on behalf of the county, and the county board, ~~other~~ board, or commission shall perform any advisory or policy-making function authorized by statute. Any appointment by the county executive under this paragraph subdivision requires the confirmation of the county board unless the county board, by ordinance, elects to waive confirmation. An appointee of the county executive may assume his or her duties immediately, pending board action which shall take place within 60 days after the county executive submits the appointment to the board for confirmation. Any department head appointed by a county executive under this subsection may be removed at the pleasure of the county executive. The county executive shall comply with hiring policies set by the board when making appointments under this paragraph.

SECTION 11. 59.17 (2) (b) 2. to 6. of the statutes are created to read:

59.17 (2) (b) 2. Establish departments in county government, and sections and divisions within those departments, that the county executive believes are necessary for the efficient administration of the county. Any department or subunit of a department that the county executive creates under this subdivision may not be established unless its creation and funding are approved by a vote of the board. The county executive shall administer, supervise, and direct any department or subunit of a department that is created under this subdivision, and those departments and subunits shall report to the county executive.

3. Exercise the authority under s. 59.52 (6) (a) that would otherwise be exercised by a county board. With regard to the sale or lease of property, the county executive's action must be consistent with established county board policy and must be approved by the county board to take effect. The county board may only approve or reject the contract as negotiated by the county executive.

4. Sign all contracts, conveyances, and evidences of indebtedness on behalf of the county, to the extent that no other county officer or employee is specifically required to sign such contracts, conveyances, and evidences of indebtedness, and countersign all other contracts, conveyances, and evidences of indebtedness. No contract with the county is valid unless it is signed or countersigned by the county executive and, as provided in ss. 59.255 (2) (e) and 59.42 (2) (b) 5., by the comptroller and corporation counsel.

5. Introduce proposed ordinances and resolutions for consideration by the board.

6. Hire and supervise the number of employees that the county executive reasonably believes are necessary for him or her to carry out the duties of the county executive's office, subject to board approval of the county executive department budget.

SECTION 11e. 59.17 (2) (bm) 1. (intro.) of the statutes is amended to read:

59.17 (2) (bm) 1. (intro.) In any county with a population of ~~500,000~~ 750,000 or more, appoint the following persons:

SECTION 12. 59.17 (2) (bm) 2. of the statutes is amended to read:

59.17 (2) (bm) 2. Each appointment under subd. 1. is subject to the confirmation of the county board and is in the unclassified service, serving at the pleasure of the county executive and holding office until a new appointment is made by the county executive and confirmed by the board. An appointee of the county executive may assume his or her duties immediately, pending board action which shall take place within 60 days after the county executive submits the appointment to the board for confirmation. No prior appointee may serve longer than 6 months after the term for which he or she was appointed and confirmed expires, unless reappointed and reconfirmed. The term of each appointment is 4 years or less. The county executive shall comply with hiring policies set by the board when making appointments under subd. 1.

SECTION 12e. 59.17 (2) (br) of the statutes is amended to read:

59.17 (2) (br) In any county with a population of less than ~~500,000~~ 750,000, appoint and supervise the heads of all county departments except those elected by the people and except where the statutes provide that the appointment shall be made by other elected officers. Notwithstanding any statutory provision that a board or commission or the county board or county board chairperson appoint a department head, except s. 17.21, the county executive shall appoint and supervise the department head. Notwithstanding any statutory provision that a board or commission supervise the administration of a department, the department head shall supervise the administration of the department and the board or commission shall perform any advisory or policy-making function authorized by statute. An appointment by the county executive under this subsection requires the confirmation of the board unless the board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. Any department head appointed by a county executive under this subsection may be removed at the pleasure of the county executive unless the department head is appointed under a civil service system competitive

examination procedure established under s. 59.52 (8) or ch. 63.

**SECTION 13.** 59.22 (2) (a) of the statutes is amended to read:

59.22 (2) (a) Except for elective offices included under sub. (1), supervisors and circuit judges, and subject to s. 59.794 (3), the board has the powers set forth in this subsection, sub. (3) and s. 59.03 (1) as to any office, department, board, commission, committee, position or employee in county service created under any statute, the salary or compensation for which is paid in whole or in part by the county, and the jurisdiction and duties of which lie within the county or any portion thereof and the powers conferred by this section shall be in addition to all other grants of power and shall be limited only by express language.

**SECTION 14.** 59.22 (3) of the statutes is amended to read:

59.22 (3) REIMBURSEMENT FOR EXPENSE. The board may provide for reimbursement to any elective officer, deputy officer, appointive officer or employee for any out-of-pocket expense incurred in the discharge of that person's duty in addition to that person's salary or compensation, including without limitation because of enumeration, traveling expenses, tuition costs incurred in attending courses of instruction clearly related to that person's employment, and the board may establish standard allowances for mileage, room and meals, the purposes for which allowances may be made, and determine the reasonableness and necessity for such reimbursements, and also establish in advance a fair rate of compensation to be paid to the sheriff for the board and care of prisoners in the county jail at county expense. Any reimbursement paid under this subsection to an officer or employee of a county with a population of 750,000 or more is subject to the budget limitation described in s. 59.60 (7e).

**SECTION 15.** 59.52 (6) (a) of the statutes is amended to read:

59.52 (6) (a) *How acquired; purposes.* ~~Take~~ Except as provided in s. 59.17 (2) (b) 3., take and hold land acquired under ch. 75 and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including without limitation acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal for county institutions, lime pits for operation under s. 59.70 (24), equipment for clearing and draining land and controlling weeds for operation under s. 59.70 (18), ambulances, acquisition and transfer of real property to the state for new collegiate institutions or research facilities, and for transfer to the state for state parks and for the uses and purposes specified in s. 23.09 (2) (d).

**SECTION 16.** 59.52 (31) of the statutes is created to read:

59.52 (31) PUBLIC CONTRACTS, POPULOUS COUNTIES.  
(a) In this subsection, "county" means any county with a population of 750,000 or more.

(b) 1. Any contract with a value of at least \$100,000, but not more than \$300,000, to which a county is a party and which satisfies any other statutory requirements, may take effect only if the board's finance committee does not vote to approve or reject the contract within 14 days after the contract is signed or countersigned by the county executive, or as described in subd. 2.

2. If a board's finance committee votes to approve a contract described under subd. 1, the contract may take effect. If a board's finance committee votes to reject a contract described under subd. 1., the contract may take effect only if the contract is approved by a vote of the board within 30 days after the board's finance committee votes to reject the contract.

(c) Any single contract, or group of contracts between the same parties which generally relate to the same transaction, with a value or aggregate value of more than \$300,000, to which a county is a party and which satisfies any other statutory requirements, may take effect only if it is approved by a vote of the board.

(d) With regard to any contract to which a county is a party and which is subject to review by the board or by a committee of the board under this subsection, the board's finance committee is the only committee which has jurisdiction over the contract.

**SECTION 16e.** 59.52 (32) of the statutes is created to read:

59.52 (32) RESEARCH DEPARTMENT. In any county with a population of 750,000 or more, the board may enact an ordinance creating a department in county government to provide independent and nonpartisan research services for the board and the county executive. The department may not consist of more than 4.0 full-time equivalent positions. Employees of the department shall be hired and supervised by the comptroller, and shall serve at the pleasure of the comptroller. Such a department shall respond to requests for services from the board and the county executive. The authority to create a department under this subsection may not be exercised after the county board enacts its budget for the 2017 fiscal year.

**SECTION 17.** 59.53 (5) (a) of the statutes is amended to read:

59.53 (5) (a) The board shall contract with the department of children and families to implement and administer the child and spousal support and establishment of paternity and the medical support liability programs provided for by Title IV of the federal social security act, except that in a county with a population of 750,000 or more the county executive shall exercise all of this authority. The board may designate by board resolution any office, officer, board, department or agency, except the clerk of circuit court, as the county child support

agency and, in a county with a population of 750,000 or more, the county executive shall administer the designated county child support agency. The board of county child support agency, or county executive of a county with a population of 750,000 or more shall implement and administer the programs in accordance with the contract with the department of children and families. The attorneys responsible for support enforcement under sub. (6) (a), circuit court commissioners and all other county officials shall cooperate with the county and the department of children and families as necessary to provide the services required under the programs. The county shall charge the fee established by the department of children and families under s. 49.22 for services provided under this paragraph to persons not receiving benefits under s. 49.148 or 49.155 or assistance under s. 48.645, 49.19, 49.46, 49.465, 49.47, 49.471, or 49.472.

SECTION 18. 59.53 (6) (a) 1. of the statutes is amended to read:

59.53 (6) (a) 1. Except as provided in subd. 2. and in a county with a population of 750,000 or more, each board shall employ or contract with attorneys to provide support enforcement. In a county with a population of 750,000 or more, the county executive shall hire or contract with attorneys to provide support enforcement under this subdivision. Section 59.42 (1), (2) (a) and (3) does not preclude a board from assigning these support enforcement duties to any attorney employed by the county.

SECTION 19. 59.53 (6) (a) 2. of the statutes is amended to read:

59.53 (6) (a) 2. If on June 1, 1989, a county has 1.0 or more full-time equivalent attorney positions that have primary responsibility for handling cases described in par. (b), as determined by the district attorney of the prosecutorial unit, the county shall establish and maintain a support enforcement office consisting of support enforcement attorneys and office personnel. In counties having a population of less than ~~500,000~~ 750,000, a county budget under s. 65.90 shall list the proposed appropriation under s. 65.90 (2) for the support enforcement office separate from any other office, department or activity. In counties having a population of ~~500,000~~ 750,000 or more, a county budget shall treat a support enforcement office as a department, as defined in s. 59.60 (2) (a), separate from all other departments, and administered by the county executive. If a county ceases to employ 1.0 or more full-time equivalent attorney positions in the office, the county may provide support enforcement under subd. 1.

SECTION 20. 59.53 (20) of the statutes is amended to read:

59.53 (20) WORK CENTERS. The board may establish and operate a work center licensed under s. 104.07 to provide employment for severely handicapped individuals, except that in a county with a population of 750,000 or

more, the county executive shall be in charge of the operation of the work center.

SECTION 21. 59.53 (21) of the statutes is amended to read:

59.53 (21) OPERATION OF RELIEF PROGRAMS. The board may establish and operate a program of relief for a specific class or classes of persons residing in that county, except that in a county with a population of 750,000 or more, the county executive shall be in charge of the operation of the program of relief. The county may set such eligibility criteria to obtain relief, and may provide such services, commodities or money as relief, as the county determines to be reasonable and necessary under the circumstances. The program may include work components. The county may enact any ordinances necessary or useful to the operation of a relief program under this subsection. Counties may use vehicle registration information from the department of transportation in determining eligibility for relief programs under this subsection.

SECTION 21e. 59.53 (24) of the statutes is created to read:

59.53 (24) GOVERNMENT RELATIONS. In any county with a population of 750,000 or more, if the county has an office of intergovernmental relations or a department or subunit of a department that provides lobbying services for the county, that office, department, or subunit shall employ one individual who is responsible for representing the interests of, and reports to, the county executive and one individual who is responsible for representing the interests of, and reports to, the county board.

SECTION 22. 59.56 (11) of the statutes is amended to read:

59.56 (11) FISH AND GAME. The board may establish, maintain, and operate fish hatcheries and facilities for raising game birds, except that in a county with a population of 750,000 or more, the county may own the hatcheries and facilities, but must lease the hatcheries and facilities to another person who will maintain and operate them.

SECTION 23. 59.60 (7) of the statutes is amended to read:

59.60 (7) PUBLICATION OF BUDGET AND PUBLIC HEARING. The board shall refer the executive's or administrator's budget to the finance committee and such committee shall publish as a class 1 notice, under ch. 985, a summary of the executive's or administrator's budget and comparative figures together with a statement of the county's bonded indebtedness, in the 2 daily newspapers having the largest circulation in the county, and shall make available to the general public reprinted copies of the summary as published. The publication shall also state the date, hour, and place of the public hearing to be held by the board on such executive's or administrator's budget. The board shall, not less than 14 days after publication of the summary of the executive's or administra-

tor's budget, but not later than the first Monday in November of each year and prior to the adoption of the property tax levy, hold a public hearing on such executive's or administrator's budget, at which time citizens may appear and express their opinions. After such public hearing, and on or before the annual meeting, the finance committee shall submit to the board its recommendations for amendments to the executive's or administrator's budget, if any, and the board shall adopt the budget with such changes as it considers proper and advisable. Subject to sub. (7e), the board of a county with a population of at least 750,000 may not adopt a budget in which the total amount of budgeted expenditures related to the compensation of county board members, and to any other costs that are directly related to the operation and functioning of the county board, including staff, is greater than 0.4 percent of the county portion of the tax levy for that year to which the budget applies. When so adopted, the sums provided shall, subject to the provisions of sub. (8), constitute legal appropriations and anticipated revenues for the ensuing year.

**SECTION 24.** 59.60 (7e) of the statutes is created to read:

**59.60 (7e) MILWAUKEE COUNTY BUDGET CAP.** The 0.4 percent budget limitation for a county with a population of at least 750,000 that is described in sub. (7) does not apply to any of the following elements of the county's budget:

(a) Any costs related to pension and health care payments for retired county officers, employees, and their families.

(b) The costs for the salary, health benefits, and pension benefits of county board supervisors and the county board chairperson for any term that begins before April 2016.

(c) Any costs associated with duties performed by the county clerk under s. 59.23 (2).

(d) Any costs associated with a department created under s. 59.52 (32).

(e) Space rental that is attributable to the county board.

**SECTION 25.** 59.698 of the statutes is amended to read:

**59.698 Zoning, building inspector.** Except as provided under s. 59.69 (2) (bm), for the enforcement of all laws, ordinances, rules and regulations enacted under s. 59.69, the board may appoint a building inspector, define the building inspector's duties and fix the building inspector's term of office and compensation. This section does not apply to a county with a population of 750,000 or more.

**SECTION 26.** 59.70 (7) of the statutes is amended to read:

**59.70 (7) SOIL CONSERVATION.** The board of any county with a population of less than 750,000 may contract to do soil conservation work on privately owned

land either directly or through a committee designated by it.

**SECTION 27.** 59.70 (8m) of the statutes is amended to read:

**59.70 (8m) HARBOR IMPROVEMENT.** The board may establish, own, operate, lease, equip, and improve harbor facilities on land owned by the county that is located in this state or in another state, subject to the laws of the state in which the land is located, and may appropriate money for the activities specified in this subsection, except that in a county with a population of 750,000 or more, the county executive shall be in charge of the operation of the harbor facilities.

**SECTION 28.** 59.70 (12) (a) of the statutes is amended to read:

**59.70 (12) (a)** A county or 2 or more contiguous counties may establish a district to control mosquitoes, upon a majority vote of each board, except that the board of a county with a population of 750,000 or more may not take any action under this subsection or sub. (13).

**SECTION 29.** 59.79 (6) of the statutes is repealed.

**SECTION 30.** 59.79 (11) of the statutes is repealed.

**SECTION 31.** 59.79 (12) of the statutes is repealed.

**SECTION 32.** 59.79 (13) of the statutes is repealed.

**SECTION 33.** 59.794 of the statutes is created to read:

**59.794 Milwaukee County; limitations on board authority and on intergovernmental cooperation, shared services. (1) DEFINITIONS.** In this section:

(a) "Agreement" means an intergovernmental cooperation agreement under s. 66.0301, or a contract to provide consolidated services under s. 59.03 (2) (e), entered into by a county and another local governmental unit that is located wholly within that county.

(b) "Board" means the board of a county.

(c) "County" means a county with a population of 750,000 or more.

(d) "Executive council" means a body that consists of the mayor of a 1st class city, and the elected executive officer of every city and village that is wholly located within the county and who is also a member of the executive council as described in s. 200.23 (2) (b).

(e) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

**(2) LIMITATION ON AGREEMENTS.** (a) Subject to par. (b), before an agreement may take effect and become binding on a county, it must be approved by the executive council. If the county enters into an agreement, the executive council shall meet as soon as practicable to vote on the agreement.

(b) With regard to an intergovernmental cooperation agreement under s. 66.0301, the requirements under par. (a) apply only to any single contract, or group of contracts between the same parties which generally relate to the same transaction, with a value or aggregate value of more than \$300,000.

(3) LIMITATIONS ON BOARD AUTHORITY. (a) Notwithstanding the provisions of s. 59.51, the board may not exercise day-to-day control of any county department or subunit of a department. Such control may be exercised only by the county executive as described in s. 59.17.

(b) A board may require, as necessary, the attendance of any county employee or officer at a board meeting to provide information and answer questions. Except as provided in par. (d), for the purpose of inquiry, or to refer a specific constituent concern, the board and its members may deal with county departments and subunits of departments solely through the county executive, and no supervisor may give instructions or orders to any subordinate of the county executive that would conflict with this section.

(c) The board may not create any county department or subunit of a department, except as provided in s. 59.17 (2) (b) 2.

(d) The board may use the legal services of the corporation counsel under s. 59.42 (2).

(e) The board may not terminate, lower the salary or benefits of, or eliminate the position of, any county employee who works in the office of the county executive unless a similar change is made which affects county employees, on a countywide basis, in all other county departments. This paragraph does not apply after the county board supervisors who are elected in the 2016 spring election take office.

**SECTION 34.** 59.875 (title) of the statutes is amended to read:

**59.875 (title) Payment of contributions in and employment of annuitants under an employee retirement system of populous counties.**

**SECTION 35.** 59.875 (3) of the statutes is created to read:

59.875 (3) No individual who is receiving an annuity under an employee retirement system of a county and who is reemployed by the county may continue to receive the annuity if a similarly situated individual who is receiving an annuity under the Wisconsin Retirement System and who was reemployed by a participating employer under that system would be required to terminate the annuity.

**SECTION 36.** 66.0301 (2) of the statutes is amended to read:

66.0301 (2) ~~In~~ Subject to s. 59.794 (2), and in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful pow-

ers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

**SECTION 38n.** 111.70 (1p) of the statutes is created to read:

111.70 (1p) COUNTY EMPLOYEES IN A COUNTY WITH A POPULATION OF 750,000 OR MORE. With respect to municipal employees who are employed by a county with a population of 750,000 or more, the county executive is responsible for the municipal employer functions under this subchapter.

**SECTION 39.** 289.33 (3) (d) of the statutes is amended to read:

289.33 (3) (d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), ~~(6)~~, (7), (8), ~~and (10) and (11)~~, 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III of ch. 91.

**SECTION 40.** 806.155 of the statutes is repealed.

**SECTION 41. Nonstatutory provisions.**

(1) (a) Notwithstanding section 8.37 of the statutes, if this act is enacted on or before February 18, 2014, there shall be submitted to a vote of the electors of each county with a population of at least 750,000 at the spring election to be held on April 1, 2014, the following question: "Shall that portion of 2013 Wisconsin Act ... (this act) which limits the compensation of members of the board of supervisors of ... (name of county) other than the chairperson of the board and chairperson of the finance committee to receipt of an annual salary of not more than the annual per capita income of this county, which in

2012 was \$24,051, and which limits the compensation of the chairperson of the board to not more than 150 percent of that amount and the chairperson of the finance committee to not more than 125 percent of that amount, subject to limitations and adjustments specified by law; and which prohibits supervisors from receiving any compensation or benefits not specifically authorized or required by law become effective in this county on April 18, 2016?"

(b) If the question under paragraph (a) is approved by a majority of all votes cast on the question at the election in the county, the portions of this act specified in paragraph (a) shall take effect in that county; otherwise, the portions of this act specified in paragraph (a) shall not take effect in that county.

(2) Notwithstanding section 59.52 (25) of the statutes, the Milwaukee County board of supervisors may

not schedule a referendum to be held on April 1, 2014, with respect to any matter that is subject to the approval of the electors of the county on that date under subsection (1).

**SECTION 42. Initial applicability.**

(1) COLLECTIVE BARGAINING. The treatment of section 111.70 (1p) of the statutes first applies to employees covered by a collective bargaining agreement that is in effect on the effective date of this subsection upon the expiration, extension, renewal, or modification of the agreement.

(2) EMPLOYMENT OF ANNUITANTS IN POPULOUS COUNTIES. The treatment of section 59.875 (title) and (3) of the statutes first applies to employees of a populous county who terminate employment on the effective date of this subsection.

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October 16, 2013

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Dear Supervisors Johnson, Cullen, Haas, Schmitt, Romo West, Jursik, Lipscomb, Bowen and Stamper,

At today's closed session of the Finance, Personnel and Budget Committee, we discussed land sales, and you asked for my views in writing on the jurisdiction of the County Executive and the County Board to propose sales.

Generally speaking, with Act 14 now in effect, there is concurrent authority for both the County Executive and the County Board to initiate disposal of county lands. Wis. Stat. § 59.52(6)(c) was not affected by Act 14 and continues to grant the Board the authority to "... lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on terms that the board approves." At the same time, under Act 14, the plain language of the second sentence of newly added Wis. Stat. § 59.17(2)(b)3 states that the Executive also has the authority to sell or lease property, "consistent with established county board policy."

Elsewhere, the Executive is directed to "administer, supervise and direct ... any person who negotiates on behalf of the county," unless a statute (but not ordinance) states otherwise. Wis. Stat. § 59.17(2)(b)1.

It is my view, and the view of other attorneys in the Corporation Counsel's office who have looked at the issue, that Act 14 now limits the Board's consideration of a sale proposed by the Executive to an up or down vote, without amendment (just as the County Executive may either sign or veto, but not amend, a proposal from the Board to sell property).

Meanwhile, Milwaukee County Ordinance 32.96 sets out certain procedures the Economic & Community Development Committee can consider for the disposal of surplus county lands. For example, the ordinance states that the committee may consider whether an RFP, an RFI, or a site-specific plan process be used. The ordinance also allows use of "[a]ny other policy for disposition that the ECD committee establishes as appropriate which may be determined by the totality of the circumstances regarding the real estate involved."

In my view, all of this suggests the following application of Ordinance 32.96 going forward:

--It applies in full to property sales initiated by the Board using its authority under § 59.52(6)(c), Stats., since the Board through its ordinances has chosen to conduct itself in the manner described in 32.96.

--It does not apply to property sales initiated by the Executive under § 59.17(2)(b)3. The Executive is able to use methods he

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considers appropriate to identify buyers and establish prices. The Board would then vote up or down on the proposal.

--Sales proposed by the Executive are to be "consistent with established county board policy." In my view, Ordinance 32.96(3) does not establish Board policy, but rather describes a number of approaches the ECD may "consider" (but it not required to use) on Board-initiated land disposals. To the extent the Ordinance could be considered an expression of Board policy (which I do not believe it is), a decision by the Executive to conduct or supervise negotiations using any of the options available for consideration in 32.96(3), including any policy appropriate in the circumstances, would be consistent with established county board policy.

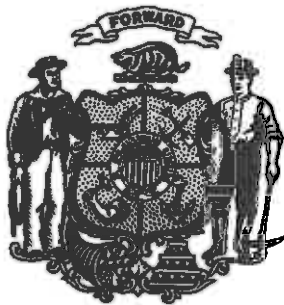
Please let me know if you would like to discuss this, or if you have any further questions you would like addressed.

Very truly yours,

Paul Bargren

cc: Janelle Jensen  
Stephen Cady  
Josh Fudge

# State of Wisconsin



2015 Senate Bill 21

Date of enactment: July 12, 2015  
Date of publication\*: July 13, 2015

## 2015 WISCONSIN ACT 55

(Vetoed in Part)

**AN ACT**; relating to: state finances and appropriations, constituting the executive budget act of the 2015 legislature.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 2.** 5.15 (1) (c) of the statutes is amended to read:

5.15 (1) (c) The wards established by municipal governing bodies in a division ordinance or resolution enacted or adopted under this section shall govern the adjustment of supervisory districts under s. 59.10 (2) (a) and (3) (b) and of aldermanic districts under s. 62.08 (1) for the purpose of local elections beginning on January 1 of the 2nd year commencing after the year of the census until revised under this section on the basis of the results of the next decennial census of population unless adjusted under sub. (2) (f) 4. or 5., (6) (a), or (7), or unless a division is required to effect an act of the legislature redistricting legislative districts under article IV, section 3, of the constitution or redistricting congressional districts. The populations of wards under each decennial ward division shall be determined on the basis of the federal decennial census and any official corrections to the census issued on or before the date of adoption of the division ordinance or resolution to reflect the correct populations of the municipality and the blocks within the municipality on April 1 of the year of the census.

**SECTION 3.** 5.15 (2) (f) 5. of the statutes is created to read:

5.15 (2) (f) 5. Territory that lies between an actual municipal boundary that existed on April 1 of the year of a federal decennial census and an intersecting municipal boundary that deviates from the actual municipal boundary on that date if the deviating boundary was used by the U.S. bureau of the census to enumerate the population of the municipality in that census.

**SECTION 4.** 5.15 (4) (b) of the statutes is amended to read:

5.15 (4) (b) Within 5 days after adoption or enactment of an ordinance or resolution under this section or any amendment thereto, the municipal clerk shall transmit one copy of the ordinance or resolution or the amendment to the county clerk of each county in which the municipality is contained, accompanied by the list and map specified in par. (a). ~~If the population of the municipality exceeds 10,000, the municipal clerk shall furnish one copy to the legislative reference bureau at the same time.~~ Each copy shall identify the name of the municipality and the county or counties in which it is located.

**SECTION 5.** 5.15 (4) (bg) of the statutes is created to read:

5.15 (4) (bg) No later than October 15 of each year following the year of a federal decennial census, each municipal clerk shall file a report with the county clerk of each county in which the municipality is contained confirming the boundaries of the municipality and of all wards in the municipality. The report shall be accompa-

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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state for the practice of a profession or occupation has been suspended or revoked.

**SECTION 1905m.** 54.25 (2) (c) 1. d. of the statutes is amended to read:

54.25 (2) (c) 1. d. The right to apply for an operator's license, a license issued under ch. 29, a license, certification, or permit issued under s. 89.06 or 89.072, or a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is incapable of understanding the nature and risks of the licensed or credentialed activity, to the extent that engaging in the activity would pose a substantial risk of physical harm to the individual or others. A failure to find that an individual is incapable of applying for a license or credential is not a finding that the individual qualifies for the license or credential under applicable laws and rules.

**SECTION 1906b.** 55.043 (4) (b) 5. of the statutes is amended to read:

55.043 (4) (b) 5. Refer the case to the department of safety and professional services or the department of agriculture, trade and consumer protection, as appropriate, if the financial exploitation, neglect, self-neglect, or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460 or to hold a license, certification, or permit issued under s. 89.06 or 89.072.

**SECTION 1907m.** 59.17 (2) (b) 3. of the statutes is renumbered 59.17 (2) (b) 3. (intro.) and amended to read:

59.17 (2) (b) 3. (intro.) Exercise the authority under s. 59.52 (6) ~~(a)~~ that would otherwise be exercised by a county board, except that the county board may continue to exercise the authority under s. 59.52 (6) with regard to land that is zoned as a park on or after the effective date of this subdivision ... [LRB inserts date], other than land zoned as a park in the city of Milwaukee that is located within the area west of Lincoln Memorial Drive, south of E. Michigan Street, east of N. Van Buren Street, and north of E. Clybourn Avenue. With regard to the sale ~~or acquisition~~, or lease ~~as landlord or tenant~~ of property, other than certain park land as described in this subdivision, the county executive's action must need not be consistent with established county board policy and ~~must be approved by~~ may take effect without submission to or approval by the county board ~~to take effect.~~ ~~The county board may only approve or reject the contract as negotiated by the county executive.~~ The proceeds of the sale of property as authorized under this subdivision shall first be applied to any debt attached to the property. Before the county executive's sale of county land may take effect, a majority of the following must sign a document, a copy of which will be attached to the bill of sale and a copy of which will be retained by the county, certifying that they believe the sale is in the best interests of the county:

**SECTION 1907n.** 59.17 (2) (b) 3. a. to c. of the statutes are created to read:

59.17 (2) (b) 3. a. The county executive or his or her designee.

b. The county comptroller or his or her designee.

c. An individual who is a resident of the city, village, or town where the property is located, who shall be appointed, at least biennially, by the executive council, as defined in s. 59.794 (1) (d). The individual appointed under this subd. 3. c. may not be an elective official, and he or she must have demonstrable experience in real estate law or real estate sales or development.

**SECTION 1907p.** 59.17 (2) (b) 7. of the statutes is created to read:

59.17 (2) (b) 7. Together with the commissioner of the opportunity schools and partnership program under subch. II of ch. 119, solicit private gifts and grants for use by the commissioner to further the purposes of the opportunity schools and partnership program under subch. II of ch. 119 and without oversight or approval of the county board.

**SECTION 1908.** 59.25 (3) (gm) of the statutes is created to read:

59.25 (3) (gm) Deposit all moneys received under s. 973.0455 (2) into a crime prevention fund and, on order of the crime board under s. 59.54 (28) (d), make grant payments as the crime board directs.

**SECTION 1909.** 59.26 (8) (a) of the statutes is amended to read:

59.26 (8) (a) In any county with a population of less than 500,000, the board, by ordinance, may fix the number of deputy sheriffs to be appointed in that county at not less than that number required by sub. (1) (a) and (b) and may set the salary of those deputies. Subject to sub. (10), the board may provide by ordinance that deputy sheriff positions be filled by appointment by the sheriff from a list of all persons with the 3 highest scores for each position based on a competitive examination. Such competitive examinations may be by a county civil service commission or by the division bureau of merit recruitment and selection in the ~~office of state employment relations department of administration~~ at the option of the board and it shall so provide by ordinance. The division bureau of merit recruitment and selection in the office of state employment relations shall, upon request of the board, conduct such examination according to the methods used in examinations for the state civil service and shall certify an eligible list of the names of all persons with the 3 highest scores on that examination for each position to the sheriff of that county who shall, subject to sub. (10), make an appointment from that list to fill the position within 10 days after he or she receives the eligible list. The county for which such examination is conducted shall pay the cost of that examination. If a civil service commission is decided upon for the selection of deputy sheriffs, then ss. 63.01 to 63.17 shall apply so far as consistent with this subsection, except ss. 63.03, 63.04 and 63.15 and except

the provision governing minimum compensation of the commissioners. The ordinance or an amending ordinance may provide for employee grievance procedures and disciplinary actions, for hours of work, for tours of duty according to seniority and for other administrative regulations. Any board provision consistent with this paragraph and existing on July 25, 1951, is validated. If the sheriff fills a deputy sheriff position by promotion, the sheriff shall, subject to sub. (10), make the appointment to the position from a list of 3 deputy sheriffs who receive the highest scores in a competitive examination. Such competitive examinations may be by a county civil service commission or by the division bureau of merit recruitment and selection ~~in the office of state employment relations~~ at the option of the board and it shall so provide by ordinance.

**SECTION 1909s.** 59.365 of the statutes is created to read:

**59.365 Moratorium on fee increases.** (1) From the effective date of this subsection ... [LRB inserts date], to April 17, 2017, the board may not charge a funeral home, cemetery, or crematorium an amount that exceeds the amount that was in effect on April 17, 2015, for any of the following fees:

(a) Fees for services rendered by a coroner.

(b) Fees assessed for the signing of a death certificate by a coroner or medical examiner.

(c) Fees assessed related to transportation services.

(2) If on or after April 18, 2017, the board increases the amount of any of the fees specified in sub. (1) (a) to (c), any such increase may not exceed the annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on December 31 of the year before the increase.

**SECTION 1910.** 59.40 (2) (n) of the statutes is amended to read:

59.40 (2) (n) Pay monthly to the treasurer the amounts required by s. 302.46 (1) for the jail assessment surcharge and the amounts required by s. 973.0455 (2). The payments shall be made by the 15th day of the month following receipt thereof.

**SECTION 1911d.** 59.40 (4) of the statutes is amended to read:

59.40 (4) CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT. If authorized by the board under s. 59.52 (28), the clerk of circuit court may contract with a debt collector, as defined in s. 427.103 (3), or enter into an agreement with the department of revenue under s. 71.93 (8) for the collection of unpaid fines and forfeitures debt. Any contract entered into with a debt collector shall provide that the debt collector shall be paid from the proceeds recovered by the debt collector. Any contract entered into with the department shall provide that the department shall charge a collection fee, as provided under s. 71.93 (8) (b) 1. The net proceeds received by the

clerk of circuit court after the payment to the debt collector shall be considered the amount of ~~finances and forfeitures debt~~ collected for purposes of distribution to the state and county under sub. (2) (m).

**SECTION 1912t.** 59.52 (6) (intro.) of the statutes is amended to read:

59.52 (6) PROPERTY. (intro.) ~~The~~ Except as provided in s. 59.17 (2) (b) 3., the board may:

**SECTION 1912tc.** 59.52 (6) (a) of the statutes is amended to read:

59.52 (6) (a) *How acquired; purposes.* ~~Except as provided in s. 59.17 (2) (b) 3., take~~ Take and hold land acquired under ch. 75 and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including without limitation acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal for county institutions, lime pits for operation under s. 59.70 (24), equipment for clearing and draining land and controlling weeds for operation under s. 59.70 (18), ambulances, acquisition and transfer of real property to the state for new collegiate institutions or research facilities, and for transfer to the state for state parks and for the uses and purposes specified in s. 23.09 (2) (d).

**SECTION 1912v.** 59.52 (11) (c) of the statutes is amended to read:

59.52 (11) (c) *Employee insurance.* Provide for individual or group hospital, surgical, and life insurance for county officers and employees and for payment of premiums for county officers and employees. A county with at least 100 employees may elect to provide health care benefits on a self-insured basis to its officers and employees. A county and one or more cities, villages, towns, other counties, ~~or county housing authorities, or school districts~~ that together have at least 100 employees may jointly provide health care benefits to their officers and employees on a self-insured basis. Counties that elect to provide health care benefits on a self-insured basis to their officers and employees shall be subject to the requirements set forth under s. 120.13 (2) (c) to (e) and (g).

**SECTION 1914d.** 59.52 (28) of the statutes is amended to read:

59.52 (28) COLLECTION OF COURT IMPOSED PENALTIES. The board may adopt a resolution authorizing the clerk of circuit court, under s. 59.40 (4), to contract with a debt collector, as defined in s. 427.103 (3), or enter into an agreement with the department of revenue under s. 71.93 (8) for the collection of unpaid fines and forfeitures debt.

**SECTION 1914h.** 59.52 (31) (e) of the statutes is created to read:

59.52 (31) (e) With regard to any transaction to which s. 59.17 (2) (b) 3. applies, such a transaction is not subject to the provisions of pars. (b), (c), and (d).



**OFFICE OF CORPORATION COUNSEL**

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Assistant Corporation Counsel

Date: July 8, 2015

To: Chairwoman Dimitrijevic  
County Board Supervisors

cc: Kelly Bablitch  
Elizabeth Stephens  
Steven Cady  
Scott Manske  
Interested Parties

From: Paul Bargren *PB*  
Corporation Counsel

Re: Senate Bill 21 (Senate Substitute Amendment 1, as amended)

Madam Chair,

On behalf of the Board, you asked for my legal analysis of proposed statutory changes affecting the powers of the County Board and the County Executive. You also asked for my thoughts on any constitutional conflicts.

**I. Summary**

**Acquisition, sale and control of all county property except County Parks would be handled administratively through the Executive.**

For example, no County Board approval or consideration would be required if the Executive opted to sell Park East or other non-park County property, although either the Comptroller or a municipal representative would need to agree with the Executive's action.

This provision would take effect upon enactment of the state budget, which apparently will be later this week.

I do not believe this raises constitutional issues under the Wisconsin or federal constitutions.

This memo describes the version of the state budget approved by the Senate on July 7 and sent to the Assembly for consideration today. This version is Senate Substitute Amendment 1 (SSA1) to Senate Bill 21, as amended, including by Senate Amendment 2 (SA2) to SSA1.<sup>1</sup>

<sup>1</sup> SSA1 was approved by the legislature's Joint Finance Committee on a party-line vote of 12-4 on July 2. It was amended, including with SA2 (adopted 17-16), and adopted by the Senate (19-14) on July 7. Changes affecting the County Board and Executive were described in Paragraph 67 of Motion 999, a catchall amendment that was adopted

This memo is public, and you are free to share it as you wish.

## II. Property and land sales and acquisition

With the exception of County Parks, SSA1 would delegate to the Executive all of the powers that a County Board normally exercises under § 59.52(6), Stats., concerning county real estate and personal property. This would complete a transition that began with Act 14 two years ago.

Specifically, the executive could lease, sell or convey any non-park county property regardless of Board policy and without Board approval. SA1 § 1907m, § 59.17(2)(b)3, \* Stats.<sup>2</sup> Proceeds of the sale would be applied first to any debt on the property. *Id.* Before the Executive's sale of County land could take effect, written approval that the sale is in the best interests of the county would be required either from a) the Comptroller or b) an individual from the municipality where the land is located who is appointed by the Executive Council of the Intergovernmental Cooperation Council<sup>3</sup> and is experienced in real estate but is not an elected official. *Id.*

The new provision would also give the Executive sole authority to "[m]ake all orders concerning county property and commence and maintain actions to protect the interests of the county." § 59.52(6)(b), Stats., read in conjunction with § 59.17(2)(b)3. \* In other words, the Executive would have the ability to initiate legal action to protect the interests of the county related to property.

The new provision gives the Executive the ability to "construct, purchase, acquire, lease, develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities." § 59.52(6)(d)1, Stats., read in conjunction with § 59.17(2)(b)3. \* However, that authority necessarily would be subject to funding available through the budget, bonding or otherwise.

## III. Constitutional issues

The changes would not in my view present constitutional issues that could be challenged by the County.

First, enactments of the legislature are presumed valid and constitutional. The Supreme Court "indulges every presumption of constitutionality and will sustain the law if at all possible." *Quinn v. Town of Dodgeville*, 122 Wis. 2d 570, 577, 364 N.W.2d 149 (1985). "If there is any reasonable basis for the exercise of the legislative power, we are obliged to uphold the enactment." *Id.* A challenger must show that "the statute is unconstitutional beyond a reasonable doubt." *State v. Cole*, 2003 WI 112, ¶ 11, 264 Wis. 2d 520, 665 N.W.2d 328.

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by Joint Finance, also 12-4. SSA1 incorporated Paragraph 67 into statutory amendments. The text of SSA1 is available at [http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/ssa1\\_sb21](http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/ssa1_sb21) The provisions of interest were in §§ 1907m – 1907r, 1912r, and 1914g, pp. 583-590. SA2 made further changes to SSA1 in sections 6 through 11 at pages 3 and 4. The text of SA2 is available at [http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/sa2\\_ssa1\\_sb21](http://docs.legis.wisconsin.gov/2015/related/amendments/sb21/sa2_ssa1_sb21)

Had SA2 not passed, an additional set of changes would have placed contracting and procurement solely within the administration and the County Board would not have had any role in reviewing or approving contracts. Also, absent SA2, the Executive would have had authority to sell O'Donnell Park without Board approval.

<sup>2</sup> Citations in *italic* marked with a \* are statutes proposed in the pending legislation.

<sup>3</sup> The Executive Council is the mayor of Milwaukee and the top executive of the 18 villages in the County.

Second, “[as] an arm of the state, generally the county cannot question the constitutionality of a state statute.” *Columbia County v. Wisconsin Retirement Fund*, 17 Wis. 2d 310, 317, 116 N.W.2d 142, 146 (1962). A taxpayer who brings an action attempting to protect the same interests as the county also lacks standing, but rather must assert a direct and personal pecuniary interest in order to have standing. *Id.*, 17 Wis. 2d. at 318-19. Likewise, a “municipal corporation has no privileges or immunities under the federal constitution which it may invoke against state legislation affecting it.” *State ex. Rel. Prahlow v. City of Milwaukee*, 251 Wis. 521, 527-28, 30 N.W.2d 260, 263 (1947).

Third, as is well recognized, the “authority of the legislature over a municipal corporation is supreme, subject, however, to such limitations as may be prescribed by the state constitution.” *Prahlow, id.* “As a creature of the legislature, a county must exercise its powers within the scope of authority that the state confers upon it.” *County of Milwaukee v. Williams*, 2007 WI 69, ¶ 24, 301 Wis. 2d 134, 732 N.W.2d 770.

And fourth, the Wisconsin constitution provides the legislature with substantial power to make laws expanding or restricting the powers of the County Board. The key provision is Art. IV, § 22:

**Powers of county boards.** The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local, legislative and administrative character as they shall from time to time prescribe

This section gives the legislature the power to delegate or remove powers from the County Board. Here, the legislature would remove powers over land sales. In effect, the legislature has inserted itself in place of the County Board and, as a matter of county policy, has delegated administration of land sales and contracts and procurement to the Executive.

The fact that this provision would be unique among the 72 counties is also permitted under the Wisconsin Constitution, which provides in Art. IV, § 23 that the legislature “shall establish one or more systems of county government.”<sup>4</sup> Uniformity is not required.

The legislation does not implicate the Executive’s veto power (and thus does not invoke the County Board’s ability to override): since under the new provisions land sales are not subject to County Board action in the first place, there is nothing to veto. “One man, one vote” concerns do not apply. *See State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 132 N.W.2d 249 (1965). That principle refers to each voter within the Milwaukee County having equal representation in the government, which is accomplished here through the fact that each voter is able to vote for County Executive.

<sup>4</sup> This is in contrast to the system of town government, which must be “as nearly uniform as practicable” throughout the state. Art. IV, § 23.  
SB21AM2.DOC



1           54.25 (2) (c) 1. d. The right to apply for an operator's license, a license issued  
2           under ch. 29, a license, certification, or permit issued under s. 89.06 or 89.072, or a  
3           credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is  
4           incapable of understanding the nature and risks of the licensed or credentialed  
5           activity, to the extent that engaging in the activity would pose a substantial risk of  
6           physical harm to the individual or others. A failure to find that an individual is  
7           incapable of applying for a license or credential is not a finding that the individual  
8           qualifies for the license or credential under applicable laws and rules.

9           **SECTION 1906b.** 55.043 (4) (b) 5. of the statutes is amended to read:

10           55.043 (4) (b) 5. Refer the case to the department of safety and professional  
11           services or the department of trade, agriculture and consumer protection, as  
12           appropriate, if the financial exploitation, neglect, self-neglect, or abuse involves an  
13           individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under  
14           chs. 440 to 460 or to hold a license, certification, or permit issued under s. 89.06 or  
15           89.072.

16           **SECTION 1907m.** 59.17 (2) (b) 3. of the statutes is renumbered 59.17 (2) (b) 3.  
17           (intro.) and amended to read:

18           59.17 (2) (b) 3. (intro.) Exercise the authority under s. 59.52 (6) ~~(a)~~ that would  
19           otherwise be exercised by a county board, except that the county board may continue  
20           to exercise the authority under s. 59.52 (6) with regard to land that is zoned as a park  
21           on or after the effective date of this subdivision .... [LRB inserts date], other than land  
22           zoned as a park in the city of Milwaukee that is located within the area west of  
23           Lincoln Memorial Drive, south of E. Mason Street, east of N. Van Buren Street, and  
24           north of E. Clybourn Avenue. With regard to the sale or, acquisition, or lease as  
25           landlord or tenant of property, other than certain park land as described in this

1 subdivision, the county executive's action must need not be consistent with  
2 established county board policy and must be approved by may take effect without  
3 submission to or approval by the county board to take effect. The county board may  
4 only approve or reject the contract as negotiated by the county executive. The  
5 proceeds of the sale of property as authorized under this subdivision shall first be  
6 applied to any debt attached to the property. Before the county executive's sale of  
7 county land may take effect, a majority of the following must sign a document, a copy  
8 of which will be attached to the bill of sale and a copy of which will be retained by the  
9 county, certifying that they believe the sale is in the best interests of the county:

10 **SECTION 1907n.** 59.17 (2) (b) 3. a. to c. of the statutes are created to read:

11 59.17 (2) (b) 3. a. The county executive or his or her designee.

12 b. The county comptroller or his or her designee.

13 c. An individual who is a resident of the city, village, or town where the property  
14 is located, who shall be appointed, at least biennially, by the executive council, as  
15 defined in s. 59.794 (1) (d). The individual appointed under this subd. 3. c. may not  
16 be an elective official, and he or she must have demonstrable experience in real estate  
17 law or real estate sales or development.

18 **SECTION 1907p.** 59.17 (2) (b) 7. of the statutes is created to read:

19 59.17 (2) (b) 7. Together with the commissioner of the opportunity schools and  
20 partnership program under subch. II of ch. 119, solicit private gifts and grants for use  
21 by the commissioner to further the purposes of the opportunity schools and  
22 partnership program under subch. II of ch. 119 and without oversight or approval of  
23 the county board.

24 **SECTION 1907r.** 59.17 (2) (d) of the statutes is created to read:

1           59.17 (2) (d) In any county with a population of 750,000 or more, the county  
2 executive shall have sole authority over the following administrative actions, which  
3 may take effect without any review or approval of the board:

4           1. Procurement, including requests for proposals or information, negotiation,  
5 approval, amendment, execution, administration, and payment.

6           2. Contracting, including negotiation, requests for proposals or information,  
7 approval, amendment, execution, administration, and payment.

8           3. Administrative review of appeals of the denial in whole or in part of a contract  
9 award, an initial permit, license, right, privilege, or authority, except an alcohol  
10 beverage license, for which a person applies through the county.

11           4. Actions taken under the administrative manual of operating procedures  
12 related to the authority and powers granted to a county executive under the statutes  
13 and under county ordinances. If an action taken by the county board conflicts with  
14 an action taken by a county executive under this subdivision, the county executive's  
15 action shall prevail over the county board's action to the extent that the county  
16 executive's action and the county board's action conflict.

17           **SECTION 1908.** 59.25 (3) (gm) of the statutes is created to read:

18           59.25 (3) (gm) Deposit all moneys received under s. 973.0455 (2) into a crime  
19 prevention fund and, on order of the crime board under s. 59.54 (28) (d), make grant  
20 payments as the crime board directs.

21           **SECTION 1909.** 59.26 (8) (a) of the statutes is amended to read:

22           59.26 (8) (a) In any county with a population of less than 500,000, the board,  
23 by ordinance, may fix the number of deputy sheriffs to be appointed in that county  
24 at not less than that number required by sub. (1) (a) and (b) and may set the salary  
25 of those deputies. Subject to sub. (10), the board may provide by ordinance that

1 deputy sheriff positions be filled by appointment by the sheriff from a list of all  
2 persons with the 3 highest scores for each position based on a competitive  
3 examination. Such competitive examinations may be by a county civil service  
4 commission or by the ~~division~~ bureau of merit recruitment and selection in the ~~office~~  
5 ~~of state employment relations~~ department of administration at the option of the  
6 board and it shall so provide by ordinance. The ~~division~~ bureau of merit recruitment  
7 and selection ~~in the office of state employment relations~~ shall, upon request of the  
8 board, conduct such examination according to the methods used in examinations for  
9 the state civil service and shall certify an eligible list of the names of all persons with  
10 the 3 highest scores on that examination for each position to the sheriff of that county  
11 who shall, subject to sub. (10), make an appointment from that list to fill the position  
12 within 10 days after he or she receives the eligible list. The county for which such  
13 examination is conducted shall pay the cost of that examination. If a civil service  
14 commission is decided upon for the selection of deputy sheriffs, then ss. 63.01 to 63.17  
15 shall apply so far as consistent with this subsection, except ss. 63.03, 63.04 and 63.15  
16 and except the provision governing minimum compensation of the commissioners.  
17 The ordinance or an amending ordinance may provide for employee grievance  
18 procedures and disciplinary actions, for hours of work, for tours of duty according to  
19 seniority and for other administrative regulations. Any board provision consistent  
20 with this paragraph and existing on July 25, 1951, is validated. If the sheriff fills a  
21 deputy sheriff position by promotion, the sheriff shall, subject to sub. (10), make the  
22 appointment to the position from a list of 3 deputy sheriffs who receive the highest  
23 scores in a competitive examination. Such competitive examinations may be by a  
24 county civil service commission or by the ~~division~~ bureau of merit recruitment and

1 selection ~~in the office of state employment relations~~ at the option of the board and  
2 it shall so provide by ordinance.

3 **SECTION 1909s.** 59.365 of the statutes is created to read:

4 **59.365 Moratorium on fee increases.** (1) From the effective date of this  
5 subsection .... [LRB inserts date], to April 17, 2017, the board may not charge a  
6 funeral home, cemetery, or crematorium an amount that exceeds the amount that  
7 was in effect on April 17, 2015, for any of the following fees:

8 (a) Fees for services rendered by a coroner.

9 (b) Fees assessed for the signing of a death certificate by a coroner or medical  
10 examiner.

11 (c) Fees assessed related to transportation services.

12 (2) If on or after April 18, 2017, the board increases the amount of any of the  
13 fees specified in sub. (1) (a) to (c), any such increase may not exceed the annual  
14 percentage change in the U.S. consumer price index for all urban consumers, U.S.  
15 city average, as determined by the U.S. department of labor, for the 12 months  
16 ending on December 31 of the year before the increase.

17 **SECTION 1910.** 59.40 (2) (n) of the statutes is amended to read:

18 59.40 (2) (n) Pay monthly to the treasurer the amounts required by s. 302.46  
19 (1) for the jail assessment surcharge and the amounts required by s. 973.0455 (2).  
20 The payments shall be made by the 15th day of the month following receipt thereof.

21 **SECTION 1911d.** 59.40 (4) of the statutes is amended to read:

22 59.40 (4) CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT. If authorized by  
23 the board under s. 59.52 (28), the clerk of circuit court may contract with a debt  
24 collector, as defined in s. 427.103 (3), or enter into an agreement with the department  
25 of revenue under s. 71.93 (8) for the collection of unpaid fines and forfeitures debt.

1 Any contract entered into with a debt collector shall provide that the debt collector  
2 shall be paid from the proceeds recovered by the debt collector. Any contract entered  
3 into with the department shall provide that the department shall charge a collection  
4 fee, as provided under s. 71.93 (8) (b) 1. The net proceeds received by the clerk of  
5 circuit court after the payment to the debt collector shall be considered the amount  
6 of ~~finer and forfeitures~~ debt collected for purposes of distribution to the state and  
7 county under sub. (2) (m).

8 **SECTION 1912r.** 59.51 (3) of the statutes is created to read:

9 59.51 (3) **POPULOUS COUNTIES, LIMITATIONS ON POWERS.** The board of any county  
10 with a population of 750,000 or more may not enact an ordinance or adopt a  
11 resolution or policy that conflicts or interferes, in form or function, with the statutory  
12 authority of a county executive.

13 **SECTION 1912t.** 59.52 (6) (intro.) of the statutes is amended to read:

14 59.52 (6) **PROPERTY.** (intro.) The Except as provided in s. 59.17 (2) (b) 3., the  
15 board may:

16 **SECTION 1912tc.** 59.52 (6) (a) of the statutes is amended to read:

17 59.52 (6) (a) *How acquired; purposes.* ~~Except as provided in s. 59.17 (2) (b) 3.,~~  
18 ~~take~~ Take and hold land acquired under ch. 75 and acquire, lease or rent property,  
19 real and personal, for public uses or purposes of any nature, including without  
20 limitation acquisitions for county buildings, airports, parks, recreation, highways,  
21 dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal  
22 for county institutions, lime pits for operation under s. 59.70 (24), equipment for  
23 clearing and draining land and controlling weeds for operation under s. 59.70 (18),  
24 ambulances, acquisition and transfer of real property to the state for new collegiate

1 institutions or research facilities, and for transfer to the state for state parks and for  
2 the uses and purposes specified in s. 23.09 (2) (d).

3 **SECTION 1912v.** 59.52 (11) (c) of the statutes is amended to read:

4 59.52 (11) (c) *Employee insurance.* Provide for individual or group hospital,  
5 surgical, and life insurance for county officers and employees and for payment of  
6 premiums for county officers and employees. A county with at least 100 employees  
7 may elect to provide health care benefits on a self-insured basis to its officers and  
8 employees. A county and one or more cities, villages, towns, other counties, ~~or~~ county  
9 housing authorities, or school districts that together have at least 100 employees  
10 may jointly provide health care benefits to their officers and employees on a  
11 self-insured basis. Counties that elect to provide health care benefits on a  
12 self-insured basis to their officers and employees shall be subject to the  
13 requirements set forth under s. 120.13 (2) (c) to (e) and (g).

14 **SECTION 1914d.** 59.52 (28) of the statutes is amended to read:

15 59.52 (28) COLLECTION OF COURT IMPOSED PENALTIES. The board may adopt a  
16 resolution authorizing the clerk of circuit court, under s. 59.40 (4), to contract with  
17 a debt collector, as defined in s. 427.103 (3), or enter into an agreement with the  
18 department of revenue under s. 71.93 (8) for the collection of ~~unpaid fines and~~  
19 ~~forfeitures debt.~~

20 **SECTION 1914e.** 59.52 (31) (b) of the statutes is repealed.

21 **SECTION 1914f.** 59.52 (31) (c) of the statutes is repealed.

22 **SECTION 1914g.** 59.52 (31) (d) of the statutes is amended to read:

23 59.52 (31) (d) With regard to any contract to which a county is a party and  
24 ~~which is subject to review by the board or by a committee of the board under this~~  
25 ~~subsection, the board's finance committee is the only committee which has~~

1 jurisdiction over the contract, the board shall have no role in the review of the  
2 contract and the contract may take effect without approval by the board.

3 SECTION 1915. 59.54 (28) of the statutes is created to read:

4 59.54 (28) CRIME PREVENTION FUNDING BOARD. (a) In this subsection:

5 1. "Chief elected official" means the mayor of a city or, if the city is organized  
6 under subch. I of ch. 64, the president of the council of that city, the village president  
7 of a village, or the town board chairperson of a town.

8 2. "Crime board" means a crime prevention funding board that is created under  
9 this subsection.

10 3. "Municipality" means a city, village, or town.

11 (b) A county may create a crime board. In a county that creates a crime board,  
12 the treasurer shall receive moneys and deposit them as described in s. 59.25 (3) (gm).  
13 The funds in such an account may be distributed upon the direction of the crime  
14 board under par. (d). The crime board shall meet, and its members may receive no  
15 compensation, other than reimbursement for actual and reasonable expenses  
16 incurred in the performance of their duties. Members shall serve for the terms that  
17 are determined by the crime board.

18 (c) A county crime board shall consist of the following members:

19 1. The presiding judge of the circuit court, or his or her designee

20 2. The district attorney, or his or her designee.

21 3. The sheriff, or his or her designee.

22 4. One of the following county officials, or his or her designee:

23 a. The county executive.

24 b. If the county does not have a county executive, the county administrator.



1           (7) RULES; ENFORCEMENT. (a) The department shall promulgate any rules that  
2           the department determines are necessary to implement and ensure compliance with  
3           this section.

4           (b) If requested by any person performing the work described in sub. (2m), the  
5           department shall inspect the payroll records of any contractor, subcontractor, or  
6           agent performing work on a project of public works that is subject to this section to  
7           ensure compliance with this section.

8           (c) Section 111.322 (2m) applies to discharge and other discriminatory acts  
9           arising in connection with any proceeding under this section.”.

10          4. Page 73, line 15: after that line insert:

11          “SECTION 453xm. 19.36 (12) of the statutes is amended to read:

12          19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is  
13          specifically authorized or required by statute, an authority ~~shall~~ may not provide  
14          access to a record prepared or provided by an employer performing work on a project  
15          to which s. ~~66.0903, 103.49, or 103.50~~ 16.856 or 84.062 applies, or on which the  
16          employer is otherwise required to pay prevailing wages, if that record contains the  
17          name or other personally identifiable information relating to an employee of that  
18          employer, unless the employee authorizes the authority to provide access to that  
19          information. In this subsection, “personally identifiable information” does not  
20          include an employee’s work classification, hours of work, or wage or benefit payments  
21          received for work on such a project.”.

22          5. Page 123, line 3: increase the dollar amount for fiscal year 2016-17 by  
23          \$25,000,000 for the purpose for which the appropriation is made.

24          6. Page 583, line 23: delete “Mason” and substitute “Michigan”.

1           **7.** Page 584, line 24: delete that line.

2           **8.** Page 585, line 1: delete lines 1 to 16.

3           **9.** Page 588, line 8: delete lines 8 to 12.

4           **10.** Page 589, line 20: delete lines 20 to 25.

5           **11.** Page 590, line 1: delete lines 1 to 2 and substitute:

6           **"SECTION 1914h.** 59.52 (31) (e) of the statutes is created to read:

7           59.52 (31) (e) With regard to any transaction to which s. 59.17 (2) (b) 3. applies,  
8           such a transaction is not subject to the provisions of pars. (b), (c), and (d).".

9           **12.** Page 602, line 25: after that line insert:

10           **"SECTION 1948y.** 66.0129 (5) of the statutes is amended to read:

11           66.0129 (5) BIDS FOR CONSTRUCTION. The nonprofit corporation shall let all  
12           contracts exceeding \$1,000 for the construction, maintenance or repair of hospital  
13           facilities to the lowest responsible bidder after advertising for bids by the publication  
14           of a class 2 notice under ch. 985. ~~Sections~~ Section 66.0901 and ~~66.0903~~ apply applies  
15           to bids and contracts under this subsection.".

16           **13.** Page 608, line 1: delete "local".

17           **14.** Page 608, line 2: delete "governmental unit" and substitute "1st class city".

18           **15.** Page 608, line 3: delete "local governmental unit" and substitute "1st class  
19           city".

20           **16.** Page 611, line 9: after "**cities**" insert "**or villages**".

21           **17.** Page 611, line 13: delete "conditions".

22           **18.** Page 611, line 13: delete "all" and substitute "any".

23           **19.** Page 611, line 14: delete "are" and substitute "is".

BUDGET MODIFICATIONS

Motion:

Move the following provisions:

1. **Revenue Limit for Consolidated School Districts.** Modify prior Joint Finance action to specify that both districts currently receiving consolidation aid (rather than only one) would receive a recurring revenue limit adjustment in 2015-16 equal to 75% of the consolidation aid that is outside of revenue limits received by the district in 2014-15. Specify that this adjustment would also apply to any future school district consolidations, and delete the current law provisions related to consolidation aid for the sixth and seventh years after consolidation.
2. **Additional Charter School Authorizers.** Modify prior Joint Finance action to specify that the Gateway Technical College District Board would be able to authorize charter schools located only in the district, not in counties adjacent to the district. Also, specify that the College of Menominee Nation and the Lac Courte Oreilles Ojibwa Community College, rather than tribal colleges generally, would be able to authorize charter schools. Specify that these two colleges could authorize up to a total of six schools between them, with no geographic limitations on the location of those schools.
3. **Course Options Program.** Modify prior Joint Finance action to restore the course options program. Additionally, specify that an institution of higher education, including the University of Wisconsin System, a technical college, a nonprofit institution of higher education, or a tribal college may charge tuition and fees to a pupil or his or her parents or guardians if that pupil receives postsecondary credit for a course taken through the course options program in an amount determined based on a negotiation between the institution of higher education and the school district. Specify that no tuition or fees could be charged for a course for which the pupil would not receive postsecondary credit.
4. **Supplemental Special Education Aid for District With Special Circumstances.** Modify prior Joint Finance action to specify that the alternative criteria for the distribution of supplemental special education aid would apply to a district that experienced a natural disaster, including a fire, rather than a district that experienced unforeseen and extenuating circumstances.  
  
Clarify that in 2015-16, a district could qualify for supplemental special education aid under either the current law criteria or the alternative criteria identified by the Committee.
5. **Participation in Athletics and Extra-Curricular Activities.** Modify prior Joint Finance action to: (a) specify that it would only apply to pupils who are enrolled in a home-based private educational program; and (b) require that the home-based educational program provide the school board with a written statement that the pupil meets the school board's requirements for participation

specifying that the municipality is not obligated to provide utility service beyond the area covered by the ordinance or agreement.

**67. *Duties and Powers of the County Executive in Populous Counties.*** Modify the current law provision regarding the duties and powers of the county executive in counties with a population of 750,000 or more to authorize the county board to continue to exercise authority related to the acquisition of property with regard to land that is zoned as a park on or after the effective date of the biennial budget act, other than land zoned as a park in the City of Milwaukee that is located within the area west of Lincoln Memorial Drive, south of East Mason Street, east of North Van Buren Street, and north of East Clybourn Avenue. Otherwise, authorize the county executive to exercise the authority vested with the county board under current law provisions with regard to: (a) making orders concerning county property and commencing and maintaining actions to protect county interests; (b) transferring county property; (c) constructing, maintaining, and financing county-owned buildings and public works projects; and (d) leasing lands to the Department of Natural Resources. Modify the current law provision pertaining to the sale or lease of property that requires actions of the county executive to be consistent with established county board policy and to be approved by the board to instead allow the county executive's action to not be consistent with established county board policy and to take effect without submission to or approval by the county board. Repeal the current law provision stating that the county board may only approve or reject the contract as negotiated by the county executive. Require the proceeds of the sale of property under this provision to first be applied to any debt attached to the property. Specify that the sale of county land by the county executive not take effect until a majority of the following individuals sign a document certifying that they believe the sale is in the best interest of the county: the county executive or the executive's designee; the county comptroller or comptroller's designee; and an individual who is a resident of the municipality where the property is located, who has been appointed, at least biennially, by the Executive Council for Milwaukee County, as defined under current law, who has demonstrable experience in real estate law or real estate sales or development, and who is not an elective official. Require a copy of that document to be attached to the bill of sale and require a second copy of that document to be retained by the county. Authorize the county executive in a county with a population of 750,000 or more to have sole authority over the following administrative actions and specify that the actions may take effect without any review or approval of the county board: (1) procurement, including requests for proposals or information, negotiation, approval, amendment, execution, administration, and payment; (2) contracting, including negotiation, requests for proposals or information, approval, amendment, execution, administration, and payment; (3) administrative review of appeals of the denial in whole or in part of a contract award, an initial permit, license, right, privilege, or authority, except an alcohol beverage license, for which a person applies through the county; and (4) actions taken under the administrative manual of operating procedures related to the authority and powers granted to a county executive under state law and under county ordinances, and specify that the county executive's action shall prevail over the county board's action to the extent that the county executive's action and the county board's action conflict. Extend these limitations to a related provision under current law concerning persons seeking review by a local governing body of a determination of a local government. Prohibit the county board from enacting an ordinance or adopting a resolution or policy that conflicts or interferes in form or function with the statutory authority of a county executive.

Repeal the current law provisions and remove related language that require the board's Finance Committee to approve contracts of at least \$100,000 but not more than \$300,000 and the county board to approve any contract of more than \$300,000 in a county with a population of 750,000 or more. In addition, create a provision specifying that the county board has no role in the review of public contracts and that public contracts take effect without the approval of the county board.

Note:

The following table shows the fiscal effect of the motion.

|   | Funding             |                   |                     | Positions   |             |            |
|---|---------------------|-------------------|---------------------|-------------|-------------|------------|
|   | 2015-16             | 2016-17           | 2015-17             | 2015-16     | 2016-17     |            |
| Educational Communications Board          | -1,647,300          | -1,647,300        | -3,294,600          | -8.60       | -8.60       | PR         |
| Student Information System                | -2,350,000          | 0                 | -2,350,000          | 0.00        | 0.00        | GPR        |
| Special Prosecutor Positions -- DOJ       | 220,000             | 220,000           | 440,000             | 0.00        | 0.00        | GPR        |
| Corrections Wheelchair Recycling Program  | 25,000              | 25,000            | 50,000              | 0.00        | 0.00        | GPR        |
| Appraisals of State-Owned Property -- DOA | 100,000             | 100,000           | 200,000             | 0.00        | 0.00        | PR         |
| Frank Lloyd Wright Heritage Trail         | 500,000             | 0                 | 500,000             | 0.00        | 0.00        | GPR        |
| DWD -- GPR-Earned                         | -2,673,000          | 0                 | -2,673,000          |             |             | GPR-REV    |
| <b>Totals</b>                             | <b>-\$1,605,000</b> | <b>\$245,000</b>  | <b>-\$1,360,000</b> | <b>0.00</b> | <b>0.00</b> | <b>GPR</b> |
|   | -2,673,000          | 0                 | -2,673,000          |             |             | GPR-REV    |
|   | -1,547,300          | -1,547,300        | -3,094,600          | -8.60       | -8.60       | PR         |
| <b>Net Impact on General Fund Balance</b> | <b>-\$1,068,000</b> | <b>-\$245,000</b> | <b>-\$1,313,000</b> | <b>0.00</b> | <b>0.00</b> |            |



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Date: July 17, 2015

To: Members of the Committee on Judiciary, Safety  
and General Services

cc: All Other Supervisors  
Shannin Brown  
Erica Hayden  
Interested Parties

From: Paul Bargren *PB*  
Corporation Counsel

Re: "Land that is zoned as a park"

At yesterday's meeting, your honorable committee asked for my views on the extent of powers delegated to the Executive in Act 55 relating to "land that is zoned as a park."

New Wis. Stat. § 59.17(2)(b)3, enacted in Act 55 and effective July 14, 2015, delegates to the Executive the ability to "[e]xercise the authority under [Wis. Stat. §] 59.52(6) that would otherwise be exercised by [the] county board, except that the county board may continue to exercise the authority under s. 59.52(6) with regard to land that is zoned as a park...."<sup>1</sup>

Section 59.52(6), in turn, contains a comprehensive list of powers relating to county land, including the power to acquire, sell, lease, rent, sue over and develop the property and the power to construct, operate and maintain buildings on the property. The committee asked whether the Executive would now have the ability to exercise the § 59.52(6) powers such as leasing or constructing buildings on land that is zoned as a park.

In my opinion, as to land that is zoned as a park, the powers described in § 59.52(6) are *not* delegated to the Executive by the new provision. Therefore, existing procedures continue to apply as to land that is zoned as a park. For example, if there is a proposal to lease out an operation at County property zoned as a park, it will be up to the Board to give the same review and consideration to the lease that it does now, subject to the normal Executive signature or veto/override process.

This reading of the statute is consistent with the legal concept of land as comprising a "bundle of rights" that include not just basic ownership but the additional rights to control use and disposal of the land. New § 59.17(2)(b)3 states that the "county board may continue to exercise the

<sup>1</sup> The Executive's authority also extends to the Transit Center, even though it is zoned as parkland. *Id.* Act 55 is the enacted version of Senate Bill 21, as amended. See my memo of July 8, 2015.



authority under s. 59.52(6) with regard to **land** that is zoned as a park...” (emphasis added). In the law of property, authority over “land” includes authority over all rights appurtenant to the land.

As our Supreme Court has stated:

Regardless of how [real] property is defined, certain rights are traditionally associated with property ownership. These are known as the “bundle of rights” and commonly include the right “to possess, use and dispose” of the property, among other rights. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435–36, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) (citation and internal quotation marks omitted); *see also Mitchell Aero, Inc. v. City of Milwaukee*, 42 Wis.2d 656, 662, 168 N.W.2d 183 (1969) (“Ownership is often referred to in legal philosophy as a bundle of sticks or rights.”); Denise R. Johnson, *Reflections on the Bundle of Rights*, 32 Vt. L.Rev. 247, 253 (2007) (listing 11 incidents of full ownership in property, including inter alia, the right to possess, the right to use, the right to manage, the right to the income, the right to capital, and the right to alienate); A.M. Honoré, *Ownership, in Oxford Essays in Jurisprudence*, 107, 112–24 (A.G. Guest ed., 1961).

*Rock-Koshkonong Lake Dist. v. State Dep't of Natural Res.*, 2013 WI 74, ¶ 129, 350 Wis. 2d 45, 102, 833 N.W.2d 800, 829

The definition of “land” in the state’s assessments statutes, while not directly controlling, is also instructive:

(1) “Real property”, “real estate,” and “**land**”, when used in chs. 70 to 76, 78, and 79, include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto...

Wis. Stat. § 70.03

In sum, given a) the plain language of the statute, b) the traditional legal concept of “land” as including the full panoply of rights, and c) the clear intent of the statute not to alter current procedures regarding land that is zoned as a park, the new powers delegated to the Executive in § 59.17(2)(b)3 do not extend beyond County land that is not zoned as a park and the Transit Center. As in the past, it is the Board that continues to exercise the § 59.52(6) powers over land that is zoned as a park (with any Board action subject to Executive review or veto).

This memo is public and may be distributed as you see fit.



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Assistant Corporation Counsel

Date: October 7, 2015

To: James Tarantino, Economic Development Director

cc: Chris Abele, County Executive  
Raisa Koltun, Chief of Staff  
Mark A. Grady  
Collen A. Foley

From: Paul Bargren *PB*  
Corporation Counsel

Re: Scope of County Executive Authority Under § 59.52(6), Stats.

You asked for my opinion on aspects of the scope of the County Executive's authority under § 59.52(6), Stats., in connection with § 59.17(2)(b)3, Stats., which was created by 2015 Act 55 last summer.

Section 59.17(2)(b)3 is unique to Milwaukee County and states among other things that the County Executive shall "[e]xercise the authority under s. 59.52(6) that would otherwise be exercised by a county board" for non-park land and property. Section 59.52(6) is a statute that applies to counties generally and lists a broad range of authority to be exercised by county boards over county lands and property, including the authority to acquire, lease, rent, sell, operate, maintain and improve land and property.

By adopting § 59.17(2)(b)3, the Legislature gave the Milwaukee County Executive specific authority over all of the § 59.52(6) functions as to non-park Milwaukee County property. This was a clear delegation of power by the Legislature to the Executive.

The question you raised concerned § 59.58(1)(a), Stats., which states that any county board may "[c]onstruct, purchase, acquire, develop, improve, extend, equip, operate and maintain airports and airport facilities and buildings..."

It is worth noting that § 59.58 is only one of several general statutory references to county authority over various types of property. See, e.g., § 59.56 (create museums and other cultural facilities); § 59.57 (industrial development projects); § 59.54(14) (provide a courthouse and other necessary buildings)

You wondered whether the specific reference in § 59.58 to a board's ability to control airports would take precedence over the Executive's ability to do so under § 59.17(2)(b)3 and § 59.52(6).

EXHIBIT

6



In my opinion, the answer is no. Under § 59.17(2)(b)3 and § 59.52(6), the Milwaukee County Executive retains authority over property at General Mitchell International Airport (which is not zoned as a park), regardless of the general references to board authority over airports in § 59.58.

I reach this conclusion for three reasons.

First, the express and specific delegation of authority by the Legislature in Act 55 came after provisions like § 59.58 regarding airports were already on the books. The Legislature expressly granted the Milwaukee County Executive broad authority to exercise all powers listed in § 59.52(6). If the Legislature had meant to exclude use of that authority over GMIA or other county property, it would have so specified, just as it excluded the Executive's authority to control land that is zoned as a park.

Second, historically and in practice, the powers set out in § 59.52(6) have been exercised by the County Board in connection with and in addition to any enabling legislation such as the airport or courthouse statutes. The County is authorized to have an airport by § 59.58, but the County's many specific options to exercise control over the operation, use and disposition of the airport are set out in § 59.52(6). In Milwaukee County, that authority is now delegated to the Executive by Act 55 and § 59.17(2)(b)3.

Third, although § 59.58 says "the board may ... operate and maintain airports," any board action to do so is necessarily subject to approval or veto by the Executive. The entire point of § 59.17(2)(b)3 was to allow the Executive to take action to "operate and maintain" (and lease and sell) **without** board approval. The legislature's intent to give that authority solely to the Executive needs to be seen as trumping the existing board/executive procedure.

Finally, I note that the legislature delegation of authority to Executive in this regard is consistent with § 59.51(1), Stats., which states as relevant here:

The board of each county shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive...

The enactment of § 59.17(2)(b)3 is such an enactment of the legislature.

This opinion is public and may be circulated as you see fit. Please be sure to contact me with any questions or comments.



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Assistant Corporation Counsel

Date: November 11, 2015

To: Supervisor Michael Mayo Sr.

cc: Members of the Committee on Finance, Personnel and Audit  
All Other Supervisors  
County Executive Abele  
Committee Coordinator Jensen  
Research Director Cady

From: Paul Bargren *PB*  
Corporation Counsel

Re: Referral No. 55 Regarding General Mitchell International Airport

**Introduction.** During discussion of amendment 1A048 at the budget meeting of the Committee on Finance, Personnel and Audit of October 29, 2015, you requested a legal opinion regarding the jurisdiction of the Federal Aviation Administration. I had stated that language in Amendment 1A048 calling for County Board approval of "any changes to existing [vendor] contracts" raised an Act 55 issue. The Legislature's Act 55, passed last summer, gives the County Executive sole authority over county land that is not zoned as a park, removing such authority from the County Board. Wis. Stat. § 59.17(2)(b)3. This gives the Executive sole authority to lease space – such as vendor space – at GMIA without County Board approval.

That led you to ask whether the Federal Aviation Administration had given superseding powers of approval to the County Board as airport sponsor or in some other fashion.

**Opinion.** In my opinion, the FAA has not granted any power to the County Board that would displace the dictates of Act 55 in granting authority over the land at GMIA to the Executive, including leases.

**Background and Analysis.** In order to receive federal development aid for airports like GMIA and Timmerman Field, the FAA requires a "public agency sponsor." See 14 C.F.R. § 151.37. A "municipality or other political subdivision" is eligible to be a public agency sponsor. 14 C.F.R. § 151.37(a). The FAA regulations treat the entire local government as the sponsor, and do not give any special status to one branch of the political body, such as the Board. The public agency sponsor must hold title to the airport land. See 14 C.F.R. § 151.25. Thus the public agency sponsor for GMIA and Timmerman is Milwaukee County, the governmental entity.

Our Office contacted the FAA general counsel's office for their interpretation of what it means for Milwaukee County to be the sponsor, for example whether that specifically implicates the County Board or something different. The FAA stated that it defers to local governing law.

The interpretation of "Milwaukee County" as airport sponsor then becomes a matter of interpretation of Wisconsin statute.

As you know, last summer, the legislature enacted 2015 Act 55, which among other things created § 59.17(2)(b)3, Stats.

Section 59.17(2)(b)3 is unique to Milwaukee County and states among other things that the County Executive "shall ... [e]xercise the authority under s. 59.52(6) that would otherwise be exercised by a county board" for non-park land and property. Section 59.52(6) is a statute that applies to counties generally and lists a broad range of authority to be exercised by county boards over county lands and property, including the authority to acquire, lease, rent, sell, operate, maintain and improve land and property.

By adopting § 59.17(2)(b)3, the Legislature gave the Milwaukee County Executive specific authority over all of the § 59.52(6) functions as to non-park Milwaukee County property. This was a clear delegation of county authority by the Legislature to the Executive. The authority extends to GMIA and Timmerman, which are not zoned as parks.

However, § 59.58(1)(a), Stats., states that any county board "may ...[c]onstruct, purchase, acquire, develop, improve, extend, equip, operate and maintain airports and airport facilities and buildings..." And § 114.14, Stats., states that "the governing board of a ... county which has established an airport ... may construct, improve, equip, maintain and operate the same or may vest jurisdiction [for operations]... in any suitable officer, board or body" or commission of the county.

It is worth noting that §§ 59.58 and 114.14 are only two of several general statutory references to county authority over various types of property. *See, e.g.*, § 59.56 (create museums and other cultural facilities); § 59.57 (industrial development projects); § 59.54(14) (provide a courthouse and other necessary buildings

In my opinion, as a matter of statutory construction, the general references in §§ 59.58 and 114.14 relating to a board's activities with airports do **not** take precedence over the Executive's specific ability to do so in Milwaukee County under § 59.17(2)(b)3 and § 59.52(6). Under § 59.17(2)(b)3 and § 59.52(6), the Milwaukee County Executive retains authority over the County's airport property, regardless of the general references to board authority over airports in §§ 59.58 and 114.14.

I reach this conclusion for four reasons.

First, the express and specific delegation of authority by the Legislature in Act 55 came after provisions like §§ 59.58 and 114.14 regarding airports were already on the books. The Legislature expressly granted the Milwaukee County Executive broad authority to exercise all powers listed in § 59.52(6). If the Legislature had meant to exclude use of the § 59.52(6) authority over GMIA, Timmerman or other county property, it would have so specified, just as it excluded the Executive's authority to control land that is zoned as a park.

Second, historically and in practice, the powers set out in § 59.52(6) have been exercised by the County Board in connection with and in addition to any enabling legislation such as the airport or courthouse statutes. The County is authorized to have an airport by § 59.58, but the County's many specific options to exercise control over the operation, use and disposition of the airport are set out in § 59.52(6). In Milwaukee County, that authority is now delegated to the Executive by Act 55 and § 59.17(2)(b)3.

Third, although § 59.58 says “the board may ... operate and maintain airports” and § 114.14 says “the governing body of a ... county may” operate or delegate operations of an airport, any board action to do so is necessarily subject to approval or veto by the Executive. The entire point of § 59.17(2)(b)3 was to allow the Executive to take action to “operate and maintain” (and lease and sell) **without** board approval.<sup>1</sup> The legislature’s intent to give that authority solely to the Executive needs to be seen as trumping the existing board/executive procedure.

And fourth, the sections granting general authority to boards relating to airports say a board “may” exercise that authority, while the § 59.17(2)(b)3 says the Milwaukee County Executive “shall” have authority over non-park land, an express grant that trumps the optional grant provided to the Board.

Finally, I note that the legislature’s delegation of authority to Executive in this regard is consistent with § 59.51(1), Stats., which states as relevant here:

The board of each county shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive...

The enactment of § 59.17(2)(b)3 is such an enactment of the legislature granting power to the County Executive.

Because the provisions of Act 55 now place authority for Milwaukee County’s airport in the hands of the Executive, and because the FAA will defer to Wisconsin statute for the meaning of “Milwaukee County” as the public agency sponsor of GMIA and Timmerman, the County Board itself does not have any distinct role as public agency sponsor.

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<sup>1</sup> § 59.17(2)(b)3 specifically states: “With regard to the sale, acquisition, or lease as landlord or tenant of property, other than certain park land as described in this subdivision, the county executive's action need not be consistent with established county board policy and **may take effect without submission to or approval by the county board.**”



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Date: December 23, 2015

To: Brian Dranzik, Director of Transportation

cc: Timothy Karaskiewicz, Assistant Corporation Counsel

From: Paul Bargren *PB*  
Corporation Counsel

Re: Designation of Airport Concession Agreement as a Lease

You asked me to explore whether agreements with concessionaires at General Mitchell International Airport (GMIA) are properly considered leases. Having reviewed a sample concession agreement with Paradies-Mark II LLC, it is clear to me that the form of agreement is in fact a lease.

Therefore, under new legislation, such a concession agreement can be negotiated and put into effect by the County Executive and his administration without submission to or approval by the County Board.

In 2015 Act 55, the Legislature amended Wis. Stat. § 59.17(2)(b)3 and empowered the County Executive to “[e]xercise the authority under s. 59.52(6) that would otherwise be exercised by a county board” except for “land that is zoned as a park.” *Id.*

The “authority under s. 59.52(6)” that the Executive may now exercise includes the authority to “lease or rent property, real and personal, for public uses or purposes of any nature.” § 59.52(6). In addition, “[w]ith regard to the sale, acquisition, or lease as landlord or tenant of property, other than certain park land as described in this subdivision, the county executive’s action need not be consistent with established county board policy and may take effect without submission to or approval by the county board.” § 59.17(2)(b)3 (emphasis added).

Because GMIA is zoned 1L1 (light industrial, airport as a permitted use) and not as a park, if the airport concession agreements are leases, they will fall within the Executive’s authority under § 59.17(2)(b)3 and will not be subject to County Board review or approval.

A lease is a form of contract or agreement that allows the lessee exclusive use of property for a specified time. Wis. Stat. § 704.01(1). To be valid, a lease for a term longer than a year must set out in writing “the amount of rent or other consideration,” the start and end dates, a description of the premises, the identity of the parties, and any other material terms. Wis. Stat. §§ 704.03(1), 706.02.

And, as noted in FAA regulations, an airport “concession may be operated under various types of agreements, including but not limited to ... [l]eases [and] [s]ubleases....” 49 CFR § 23.3

The seven-year Paradies-Mark II, LLC concession agreement satisfies all of the requirements for a lease. It gives the dates of the term, describes the locations of the several leased concession premises, identifies the County and Paradies-Mark II as the parties and sets out numerous other material terms such as the conduct of the concession operations, products to be offered, pricing, hours of operation, personnel requirements, maintenance requirements, services to be performed by the County, insurance and indemnity to be provided, and DBE and affirmative action and similar requirements, among many others. The listing of material terms runs to 46 double-spaced pages.

Perhaps most importantly, the lease includes an extensive, 8-page rental payment scheme based on a minimum annual guarantee or a percentage fee, whichever is greater.

This form of GMIA concession agreement is easily categorized as a lease. As a lease of non-park county lands, it falls within the authority granted to the Executive by 2015 Act 55 and it "may take effect without submission to or approval by the county board." § 59.17(2)(b)3.

Language included in the 2016 county budget to the contrary is ineffective.



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Date: January 26, 2016

To: Scott Manske, Comptroller

cc: Paul Bargren  
Colleen A. Foley  
Teig Whaley-Smith  
Jeremy Theis  
Patrick Lee

From: Mark A. Grady  
Deputy Corporation Counsel *MAG*

Re: Scope of County Executive Authority Under § 59.52(6), Stats.

You asked for my opinion on the scope of the County Executive's authority to "operate" a county building, structure or facility under § 59.52(6), Stats., in connection with § 59.17(2)(b)3, Stats., which was created by 2015 Act 55.

In my opinion, for the reasons explained below, under the authority to "operate" granted by this statute, the County Executive has authority to approve those things that are required in order to render a building, structure or facility capable of functioning as a building, structure or facility.

Section 59.17(2)(b)3 is unique to Milwaukee County and states among other things that the County Executive shall "[e]xercise the authority under s. 59.52(6) that would otherwise be exercised by a county board" for non-park land and property. Section 59.52(6) is a statute that applies to counties generally and lists a broad range of authority to be exercised by county boards over county lands and property. Therefore, this authority can now be exercised by the County Executive in Milwaukee County:

- (6) PROPERTY. Except as provided in s. 59.17(2)(b)3, the [County Executive] may:
- (a) *How acquired; purposes.* Take and hold land acquired under ch. 75 and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, . . .
  - (b) *Control; actions.* Make all orders concerning county property and commence and maintain actions to protect the interests of the county.
  - (c) *Transfers.* Direct the clerk to lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, . . .
  - (d) *Construction, maintenance and financing of county-owned buildings and public works projects.*



1. Construct, purchase, acquire, lease, develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities hereinafter in this subsection referred to as "projects", . . . and including all property, real and personal, pertinent or necessary for such purposes.
2. Finance such projects, including necessary sites, by the issuance of revenue bonds under s. 66.0621, . . .
3. Operate or lease such projects in their entirety or in part, and impose fees or charges for the use of or admission to such projects. Such projects may include space designed for leasing to others if such space is incidental to the purposes thereof.

Your question focuses on the definition of "develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities." More specifically, your question focuses on the vaguest of those terms; that is, what it means to "operate" a "facility."

It is difficult to provide an all-encompassing definition to be applied to all fact situations in the future. Nevertheless, in my opinion, the power that is referenced in this statute as to non-park real estate, both when the County Board previously possessed that power and now when the Milwaukee County Executive possesses that power, is the power to do those things needed to be done in order for the land, buildings, structures and physical facilities to support the programs that are intended to occur in those facilities. By contrast, the power referenced in this statute is not the power to operate the programs that occur on that land or in those buildings, structures or physical facilities.

### "Facility"

The Oxford English Dictionary defines "facility" as

1. Space or equipment necessary for doing something
2. An establishment set up to fulfill a particular function or provide a particular service, typically an industrial or medical one:

[http://www.oxforddictionaries.com/us/definition/american\\_english/facility](http://www.oxforddictionaries.com/us/definition/american_english/facility)

The Merriam-Webster dictionary defines "facility," as relevant here, as

- something (such as a building or large piece of equipment) that is built for a specific purpose

<http://www.merriam-webster.com/dictionary/facility>

Both of these definitions focus on things of a physical nature. This is consistent with the statutory use of the word "facility" in the list of terms of "buildings, structure and facilities."

One rule of statutory construction is that

the statutory context in which a term is used, including the language and structure of surrounding or closely related statutes, is often highly instructive in determining a term's meaning. *State v. Jensen*, 2010 WI 38, ¶ 15, 324 Wis.2d 586, 782 N.W.2d 415.



*State v. Soto*, 2012 WI 93, ¶ 20, 343 Wis. 2d 43, 55-56, 817 N.W.2d 848, 854. Similarly,

When two or more words or phrases are listed together, the general terms . . . may be defined by the other words and understood in the same general sense. This canon of construction is known in Latin as *noscitur a sociis*, "it is known from its associates," and its variation *ejusdem generis*.

*Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 66, 327 Wis. 2d 572, 604-05, 786 N.W.2d 177, 194.

Under that rule [*ejusdem generis*], where a general term . . . is preceded or followed by a series of specific terms, the general term is viewed as being limited to items of the same type or nature as those specifically enumerated.

*State v. Campbell*, 102 Wis. 2d 243, 246, 306 N.W.2d 272, 273 (Ct. App. 1981).

Here, the word "facility" is listed together with the words "buildings" and "structures" and is followed by a long list of examples. Therefore, a "facility" must be understood in the same fashion as those other terms. All of these terms describe a physical thing as opposed to a "program" operated in a facility which is more ethereal.

### "Operate"

Perhaps the more difficult question relates to what it means to "operate" a facility. As with the term "facility," the term "operate" is one term in a list of similar terms; that is, to "develop, improve, extend, equip, operate and maintain" buildings and facilities. Utilizing those same principles of statutory construction, "operate" should be understood similarly to "maintain" or "develop" or "equip."

One definition of "operations" was provided to our office from the context of federal government facility management:

Activities related to the normal performance of the functions for which a facility or item of equipment is intended to be used. Costs such as utilities (electricity, water, sewage), fuel, janitorial services, window cleaning, rodent and pest control, upkeep of grounds, vehicle rentals, waste management, periodic condition assessments, the facilities maintenance system, miscellaneous engineer services not attributable to a specific project and personnel costs associated with the performance of these functions are generally included in the scope of operations and are not considered maintenance costs.<sup>1</sup>

The publication from which this definition is taken uses the definition primarily to distinguish "operations" from "maintenance," as opposed to distinguishing "operations" from "non-operations." Nevertheless, the definition is consistent with my view. This definition focuses on those things needed in relation to the physical land, building or facility, as opposed to those things needed for the programs to be operated on the land, or in the building or facility.

<sup>1</sup> United States Department of the Interior, *Common Definitions for Maintenance and Construction Terms*, at p. 3, available at [http://www.doi.gov/programs/asset\\_management/upload/Definitions\\_Maint\\_and\\_Construc\\_Terms.pdf](http://www.doi.gov/programs/asset_management/upload/Definitions_Maint_and_Construc_Terms.pdf)

Again, as with any definition, there will be times when it is difficult to decide where the line lies. For example, it could be argued that because a courthouse cannot function without personnel, the authority to operate a courthouse includes the authority to determine all personnel policies for the personnel who work in the building. Or, in a more extreme example, it could be argued that because a courthouse is intended to house courts, and because courts cannot operate without filing procedures, the authority to operate a courthouse must include the authority to operate the courts and to determine the filing procedures for courts. Or, in another example, it has been argued that the authority to operate a zoo necessarily includes the authority to operate a stroller rental concession or food and merchandise concessions, based on an argument that not providing those items results in limited "operations" compared to peer zoos.

In my opinion, these examples illustrate an argument for a definition that is too broad; they equate the programming that occurs in such a facility with the facility itself and lead down a slippery definitional slope. Under such a broad definition, it would be difficult to find anything that occurs at a zoo or in a building that would not be covered as part of operating the building (for example at a zoo, including which animals to own, how many and what kinds of employees to employ and how much to pay them, etc.). Such a broad definition is inconsistent with the focus on general real estate authority set forth in this section of the statutes.

Finally, the interpretation of "operate" set forth in this memo also fits the usage in (d)(3) above, further indicating it is a valid definition. As applied there, this definition authorizes the Executive to render buildings functional "in their entirety" or "in part," or to lease them out. Both concepts refer to making the building available for programming, but not to operating the programming itself.

In summary, under the authority to "operate" a "facility," the County Executive has authority to approve those things that are required in order to render a building, structure or facility capable of functioning as a building, structure or facility, as opposed to those things required to operate the programs contained within the facility. Our office will provide additional guidance as needed and requested.



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Date: May 16, 2016

To: Members of the Committee on  
Economic and Community Development

cc: Kelly Bablitch  
Shanin Brown  
Katarina Lucas  
Interested Parties

From: Paul Bargren *PB*  
Corporation Counsel

Re: File 16-310—Effect of Act 55 on ECD Committee functions

I was asked to outline matters that fall within the jurisdiction of the County Board and this committee versus matters that no longer come to the Board following the passage of Act 55 by the Legislature in July 2015.

### Background

Act 55 created new Wis. Stat. § 59.17(2)(b)3, which delegates to the Milwaukee County Executive the ability to

Exercise the authority under s. 59.52(6) that would otherwise be exercised by a county board, except that the county board may continue to exercise the authority under s. 59.52 (6) with regard to land that is zoned as a park ....<sup>1</sup> With regard to the sale, acquisition, or lease as landlord or tenant of property, other than certain park land as described in this subdivision, the county executive's action need not be consistent with established county board policy and may take effect without submission to or approval by the county board.

Act 55 applies only to Milwaukee County.

#### 1. Land that is "zoned as a park" vs. land that is not

The first key distinction concerns land that is zoned as a park – which continues to fall under County Board authority – vs. land that is not zoned as a park, which generally now falls only under the authority of the County Executive. The "land" includes any buildings on the parcel.

The phrase "zoned as a park" refers to the zoning that is applied by the local municipality. In general, most parkland in the County has been zoned locally "as a park," but it was discovered

<sup>1</sup> The Executive's authority also extends to the Transit Center, even though it is zoned as parkland. *Id.*



after Act 55 became law that some of the municipalities in the County did not have an actual “parks” zone, or had not applied their “parks” zone to all parkland. The Executive and the County Parks Department then requested zoning changes to assure that all County Parks would attain local “parks” zoning, a process that is nearly complete. In the meantime, the Executive has pledged to treat all County Parks as “zoned as a park” and within the Board’s authority.

The parks/non-parks distinction carries through and supersedes other reference to county authority over other types of property. For example, Wis. Stat. § 59.56 creates Board authority to create, expand, operate and maintain public museums, § 59.54(14) creates Board authority over operation of the Courthouse, and § 59.58 creates Board authority over airport operations. The parks/non-parks distinction supersedes these other statutes, for reasons set out in Exhibit A.

Some County properties that are **not** zoned as parks include the Charles Allis Art Museum, (Multi-Family zoning), the Milwaukee Public Museum (Central Business), the Zoo (Institutional), the House of Correction (Institutional) and the Airport (Industrial).

In contrast, the Milwaukee Art Museum and the O’Donnell Park parking structure are in the City’s Parks zone, and Board approval was required for the pending transaction to transfer the O’Donnell structure and the MAM buildings to the Museum.

## **2. Powers to be exercised (whether by Board/Committee or by Executive)**

Sec. 59.17(2)(b)3 refers to § 59.52(6), which in turn, contains a comprehensive list of powers relating to county land. It is that list of powers that will belong either to the Board or to the Executive, depending on whether the land at issue is zoned as a park. Under Board rules discussed below, some of those actions relating to land zoned as a park will be referred through this committee.

Included in the list of powers and authority in § 59.52(6) are the following:

- Take and hold land acquired through foreclosure
- Acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds.
- Commence and maintain lawsuits to protect the property interests of the county.
- Lease, sell, or convey any county property, provided that special deed restrictions or other limitations do not apply.
- Construct, purchase, acquire, lease, develop, improve, extend, equip, operate, and maintain all county buildings, structures and facilities
- Operate or lease such projects, and impose fees or charges for the use of or admission to such projects.<sup>2</sup>

## **3. The requirement for funding authorization**

Even where the Executive is exercising authority under § 59.17(2)(b)3 over non-parks land without Board consideration, the Executive must still have budget authorization if spending is required. For example, the Executive would need funding through an appropriate departmental

<sup>2</sup> § 59.52(6) states that bonds may be issued subject to § 66.0621, but bonds under that section would require Board approval regardless of the nature of the underlying land.

budget before he could issue a contract to operate or maintain a non-parks facility. That funding would be part of the Board's annual budget review and approval process.

Contract funding required over more than budget year is also subject to Board approval, even for non-parks land. Wis. Stat. § 59.60(12).

#### 4. Land sales restrictions

A sale of non-parks land by the Executive requires certification by the Executive and either the Comptroller or a representative in that municipality designated by the Intergovernmental Cooperation Council that the sale is in the best interests of the County. § 59.17(2)(b))3.a-c. Act 55 does not provide for consideration of these sales by the Committee or the Board. A number of parcels have been sold under this process, including foreclosed properties and former Park East Freeway lands. The Comptroller has pledged to provide a regular report of sales under this process.

#### 5. Effect on duties of Committee

Sec. 1.11(c)(6) of the County Board Rules in Chapter 1 of the Milwaukee County Ordinances sets out a list of duties included in this Committee's responsibilities. Addressing them one by one in light of the above:

- **1. All matters pertaining to economic development and the disposition of excess or surplus county lands, including, but not limited to, sale or lease of property and financing terms.**

Committee action will be limited to consideration of development, etc., of land zoned as parks and review (but not approval) of non-parks transactions that are reported as informational items or as completed transactions.

- **2. All matters pertaining to the research park and airport business park.**

The last Research Park property was sold to the Research Park Corporation earlier this year, so the County is no longer involved there except indirectly through board of directors membership.

The airport business park is not zoned as parks.

- **3. The study and recommendations of all plans, projects and programs for fostering community development throughout the county, including the urban county development block grant program and the survey of available improved and unimproved housing sites and funds for county housing purposes.**

This will apply to parks land but not to non-parks land, except as to items reported for information or as completed transactions.

- **4. Overview the administration of all federal, state and local housing programs at the county level.**

Since housing programs in which the County is involved are not generally on County land, Act 55 does not directly apply. Instead, housing matters will continue to be treated as contract or policies matters as they have in the past. Some multi-year federal housing contracts have traditionally gone through the Health and Human Needs and Finance Committees before going to the County Board.

- **5. The study, review and recommendation of plans and solutions of housing persons displaced from their dwellings by governmental actions of the county or the municipalities which compose it, and the coordination and implementation of**

**relocation plans and procedures with federal, state and local agencies and units of government within the county.**

See No. 4.

- **6. Veteran's housing.**

See No. 4.

- **7. All policy matters pertaining to disadvantaged business enterprises.**

DBE matters are not normally related to land issues, so consideration of these matters would not be limited by Act 55.

**Exhibit A**

The express grants of authority to the Executive in Act 55 and § 59.17(2)(b)3 supersede the more general grants of authority to the Board in certain areas for the following reasons:

First, the express and specific delegation of authority by the Legislature in Act 55 came after provisions like § 59.58 regarding airports were already on the books. The Legislature expressly granted the Milwaukee County Executive broad authority to exercise all powers listed in § 59.52(6). If the Legislature had meant to exclude use of that authority over GMIA or other county property, it would have so specified, just as it excluded the Executive's authority to control land that is zoned as a park.

Second, historically and in practice, the powers set out in § 59.52(6) have been exercised by the County Board in connection with and in addition to any enabling legislation such as the airport or courthouse statutes. The County is authorized to have an airport by § 59.58, but the County's many specific options to exercise control over the operation, use and disposition of the airport are set out in § 59.52(6). In Milwaukee County, that authority is now delegated to the Executive by Act 55 and § 59.17(2)(b)3.

Third, although § 59.58 says "the board may ... operate and maintain airports," any board action to do so is necessarily subject to approval or veto by the Executive. The entire point of § 59.17(2)(b)3 was to allow the Executive to take action to "operate and maintain" (and lease and sell) **without** board approval. The legislature's intent to give that authority solely to the Executive needs to be seen as trumping the existing board/executive procedure.

Finally, I note that the legislature delegation of authority to Executive in this regard is consistent with § 59.51(1), Stats., which states as relevant here:

The board of each county shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive...

The enactment of § 59.17(2)(b)3 is such an enactment of the legislature.



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Date: May 16, 2016

To: Members of the Committee on  
Economic and Community Development

cc: Kelly Bablitch  
Shanin Brown  
Katarina Lucas  
Interested Parties

From: Paul Bargren *PB*  
Corporation Counsel

Re: Addendum for File 16-310—Effect of Act 55 on ECD Committee functions

To clarify, nothing in Act 55 affects the County Board's or Committee's ability to continue considering matters that do not involve County owned land.

Thus the Committee may continue to review and evaluate Community Development Block Grants and other development and improvement programs and funds that are administered through the County and awarded to non-profits and social agencies who operate independently of county-owned land.

This is one of the committee functions traditionally performed under duty "3" in MCO 1.11(c)(6), and it will continue. That provision describes as a duty of the committee the following:

- **3. The study and recommendations of all plans, projects and programs for fostering community development throughout the county, including the urban county development block grant program and the survey of available improved and unimproved housing sites and funds for county housing purposes.**





State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBs0107/1  
ALL:all

SENATE SUBSTITUTE AMENDMENT 1,  
TO SENATE BILL 21

July 6, 2015 - Offered by JOINT COMMITTEE ON FINANCE.

1     **AN ACT**; relating to: state finances and appropriations, constituting the  
2     executive budget act of the 2015 legislature.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3     **SECTION 2.** 5.15 (1) (c) of the statutes is amended to read:

4     5.15 (1) (c) The wards established by municipal governing bodies in a division  
5     ordinance or resolution enacted or adopted under this section shall govern the  
6     adjustment of supervisory districts under s. 59.10 (2) (a) and (3) (b) and of aldermanic  
7     districts under s. 62.08 (1) for the purpose of local elections beginning on January 1  
8     of the 2nd year commencing after the year of the census until revised under this  
9     section on the basis of the results of the next decennial census of population unless  
10    adjusted under sub. (2) (f) 4. or 5., (6) (a), or (7), or unless a division is required to  
11    effect an act of the legislature redistricting legislative districts under article IV,



1           54.25 (2) (c) 1. d. The right to apply for an operator's license, a license issued  
2 under ch. 29, a license, certification, or permit issued under s. 89.06 or 89.072, or a  
3 credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is  
4 incapable of understanding the nature and risks of the licensed or credentialed  
5 activity, to the extent that engaging in the activity would pose a substantial risk of  
6 physical harm to the individual or others. A failure to find that an individual is  
7 incapable of applying for a license or credential is not a finding that the individual  
8 qualifies for the license or credential under applicable laws and rules.

9           **SECTION 1906b.** 55.043 (4) (b) 5. of the statutes is amended to read:

10           55.043 (4) (b) 5. Refer the case to the department of safety and professional  
11 services or the department of trade, agriculture and consumer protection, as  
12 appropriate, if the financial exploitation, neglect, self-neglect, or abuse involves an  
13 individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under  
14 chs. 440 to 460 or to hold a license, certification, or permit issued under s. 89.06 or  
15 89.072.

16           **SECTION 1907m.** 59.17 (2) (b) 3. of the statutes is renumbered 59.17 (2) (b) 3.  
17 (intro.) and amended to read:

18           59.17 (2) (b) 3. (intro.) Exercise the authority under s. 59.52 (6) (a) that would  
19 otherwise be exercised by a county board, except that the county board may continue  
20 to exercise the authority under s. 59.52 (6) with regard to land that is zoned as a park  
21 on or after the effective date of this subdivision .... [LRB inserts date], other than land  
22 zoned as a park in the city of Milwaukee that is located within the area west of  
23 Lincoln Memorial Drive, south of E. Mason Street, east of N. Van Buren Street, and  
24 north of E. Clybourn Avenue. With regard to the sale ~~or~~, acquisition, or lease as  
25 landlord or tenant of property, other than certain park land as described in this

1 subdivision, the county executive's action ~~must~~ need not be consistent with  
2 established county board policy and ~~must be approved by~~ may take effect without  
3 submission to or approval by the county board to take effect. ~~The county board may~~  
4 ~~only approve or reject the contract as negotiated by the county executive.~~ The  
5 proceeds of the sale of property as authorized under this subdivision shall first be  
6 applied to any debt attached to the property. Before the county executive's sale of  
7 county land may take effect, a majority of the following must sign a document, a copy  
8 of which will be attached to the bill of sale and a copy of which will be retained by the  
9 county, certifying that they believe the sale is in the best interests of the county:

10 **SECTION 1907n.** 59.17 (2) (b) 3. a. to c. of the statutes are created to read:

11 59.17 (2) (b) 3. a. The county executive or his or her designee.

12 b. The county comptroller or his or her designee.

13 c. An individual who is a resident of the city, village, or town where the property  
14 is located, who shall be appointed, at least biennially, by the executive council, as  
15 defined in s. 59.794 (1) (d). The individual appointed under this subd. 3. c. may not  
16 be an elective official, and he or she must have demonstrable experience in real estate  
17 law or real estate sales or development.

18 **SECTION 1907p.** 59.17 (2) (b) 7. of the statutes is created to read:

19 59.17 (2) (b) 7. Together with the commissioner of the opportunity schools and  
20 partnership program under subch. II of ch. 119, solicit private gifts and grants for use  
21 by the commissioner to further the purposes of the opportunity schools and  
22 partnership program under subch. II of ch. 119 and without oversight or approval of  
23 the county board.

24 **SECTION 1907r.** 59.17 (2) (d) of the statutes is created to read:

1           59.17 (2) (d) In any county with a population of 750,000 or more, the county  
2 executive shall have sole authority over the following administrative actions, which  
3 may take effect without any review or approval of the board:

4           1. Procurement, including requests for proposals or information, negotiation,  
5 approval, amendment, execution, administration, and payment.

6           2. Contracting, including negotiation, requests for proposals or information,  
7 approval, amendment, execution, administration, and payment.

8           3. Administrative review of appeals of the denial in whole or in part of a contract  
9 award, an initial permit, license, right, privilege, or authority, except an alcohol  
10 beverage license, for which a person applies through the county.

11           4. Actions taken under the administrative manual of operating procedures  
12 related to the authority and powers granted to a county executive under the statutes  
13 and under county ordinances. If an action taken by the county board conflicts with  
14 an action taken by a county executive under this subdivision, the county executive's  
15 action shall prevail over the county board's action to the extent that the county  
16 executive's action and the county board's action conflict.

17           **SECTION 1908.** 59.25 (3) (gm) of the statutes is created to read:

18           59.25 (3) (gm) Deposit all moneys received under s. 973.0455 (2) into a crime  
19 prevention fund and, on order of the crime board under s. 59.54 (28) (d), make grant  
20 payments as the crime board directs.

21           **SECTION 1909.** 59.26 (8) (a) of the statutes is amended to read:

22           59.26 (8) (a) In any county with a population of less than 500,000, the board,  
23 by ordinance, may fix the number of deputy sheriffs to be appointed in that county  
24 at not less than that number required by sub. (1) (a) and (b) and may set the salary  
25 of those deputies. Subject to sub. (10), the board may provide by ordinance that

1 deputy sheriff positions be filled by appointment by the sheriff from a list of all  
2 persons with the 3 highest scores for each position based on a competitive  
3 examination. Such competitive examinations may be by a county civil service  
4 commission or by the ~~division~~ bureau of merit recruitment and selection in the ~~office~~  
5 ~~of state employment relations~~ department of administration at the option of the  
6 board and it shall so provide by ordinance. The ~~division~~ bureau of merit recruitment  
7 and selection ~~in the office of state employment relations~~ shall, upon request of the  
8 board, conduct such examination according to the methods used in examinations for  
9 the state civil service and shall certify an eligible list of the names of all persons with  
10 the 3 highest scores on that examination for each position to the sheriff of that county  
11 who shall, subject to sub. (10), make an appointment from that list to fill the position  
12 within 10 days after he or she receives the eligible list. The county for which such  
13 examination is conducted shall pay the cost of that examination. If a civil service  
14 commission is decided upon for the selection of deputy sheriffs, then ss. 63.01 to 63.17  
15 shall apply so far as consistent with this subsection, except ss. 63.03, 63.04 and 63.15  
16 and except the provision governing minimum compensation of the commissioners.  
17 The ordinance or an amending ordinance may provide for employee grievance  
18 procedures and disciplinary actions, for hours of work, for tours of duty according to  
19 seniority and for other administrative regulations. Any board provision consistent  
20 with this paragraph and existing on July 25, 1951, is validated. If the sheriff fills a  
21 deputy sheriff position by promotion, the sheriff shall, subject to sub. (10), make the  
22 appointment to the position from a list of 3 deputy sheriffs who receive the highest  
23 scores in a competitive examination. Such competitive examinations may be by a  
24 county civil service commission or by the ~~division~~ bureau of merit recruitment and

1 selection ~~in the office of state employment relations~~ at the option of the board and  
2 it shall so provide by ordinance.

3 **SECTION 1909s.** 59.365 of the statutes is created to read:

4 **59.365 Moratorium on fee increases.** (1) From the effective date of this  
5 subsection .... [LRB inserts date], to April 17, 2017, the board may not charge a  
6 funeral home, cemetery, or crematorium an amount that exceeds the amount that  
7 was in effect on April 17, 2015, for any of the following fees:

8 (a) Fees for services rendered by a coroner.

9 (b) Fees assessed for the signing of a death certificate by a coroner or medical  
10 examiner.

11 (c) Fees assessed related to transportation services.

12 (2) If on or after April 18, 2017, the board increases the amount of any of the  
13 fees specified in sub. (1) (a) to (c), any such increase may not exceed the annual  
14 percentage change in the U.S. consumer price index for all urban consumers, U.S.  
15 city average, as determined by the U.S. department of labor, for the 12 months  
16 ending on December 31 of the year before the increase.

17 **SECTION 1910.** 59.40 (2) (n) of the statutes is amended to read:

18 59.40 (2) (n) Pay monthly to the treasurer the amounts required by s. 302.46  
19 (1) for the jail assessment surcharge and the amounts required by s. 973.0455 (2).  
20 The payments shall be made by the 15th day of the month following receipt thereof.

21 **SECTION 1911d.** 59.40 (4) of the statutes is amended to read:

22 59.40 (4) CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT. If authorized by  
23 the board under s. 59.52 (28), the clerk of circuit court may contract with a debt  
24 collector, as defined in s. 427.103 (3), or enter into an agreement with the department  
25 of revenue under s. 71.93 (8) for the collection of unpaid fines and forfeitures debt.

1 Any contract entered into with a debt collector shall provide that the debt collector  
2 shall be paid from the proceeds recovered by the debt collector. Any contract entered  
3 into with the department shall provide that the department shall charge a collection  
4 fee, as provided under s. 71.93 (8) (b) 1. The net proceeds received by the clerk of  
5 circuit court after the payment to the debt collector shall be considered the amount  
6 of ~~finer and forfeitures~~ debt collected for purposes of distribution to the state and  
7 county under sub. (2) (m).

8 SECTION 1912r. 59.51 (3) of the statutes is created to read:

9 59.51 (3) POPULOUS COUNTIES, LIMITATIONS ON POWERS. The board of any county  
10 with a population of 750,000 or more may not enact an ordinance or adopt a  
11 resolution or policy that conflicts or interferes, in form or function, with the statutory  
12 authority of a county executive.

13 SECTION 1912t. 59.52 (6) (intro.) of the statutes is amended to read:

14 59.52 (6) PROPERTY. (intro.) The Except as provided in s. 59.17 (2) (b) 3., the  
15 board may:

16 SECTION 1912tc. 59.52 (6) (a) of the statutes is amended to read:

17 59.52 (6) (a) *How acquired; purposes.* ~~Except as provided in s. 59.17 (2) (b) 3.,~~  
18 ~~take~~ Take and hold land acquired under ch. 75 and acquire, lease or rent property,  
19 real and personal, for public uses or purposes of any nature, including without  
20 limitation acquisitions for county buildings, airports, parks, recreation, highways,  
21 dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal  
22 for county institutions, lime pits for operation under s. 59.70 (24), equipment for  
23 clearing and draining land and controlling weeds for operation under s. 59.70 (18),  
24 ambulances, acquisition and transfer of real property to the state for new collegiate

1 institutions or research facilities, and for transfer to the state for state parks and for  
2 the uses and purposes specified in s. 23.09 (2) (d).

3 **SECTION 1912v.** 59.52 (11) (c) of the statutes is amended to read:

4 59.52 (11) (c) *Employee insurance.* Provide for individual or group hospital,  
5 surgical, and life insurance for county officers and employees and for payment of  
6 premiums for county officers and employees. A county with at least 100 employees  
7 may elect to provide health care benefits on a self-insured basis to its officers and  
8 employees. A county and one or more cities, villages, towns, other counties, ~~or~~ county  
9 housing authorities, or school districts that together have at least 100 employees  
10 may jointly provide health care benefits to their officers and employees on a  
11 self-insured basis. Counties that elect to provide health care benefits on a  
12 self-insured basis to their officers and employees shall be subject to the  
13 requirements set forth under s. 120.13 (2) (c) to (e) and (g).

14 **SECTION 1914d.** 59.52 (28) of the statutes is amended to read:

15 59.52 (28) COLLECTION OF COURT IMPOSED PENALTIES. The board may adopt a  
16 resolution authorizing the clerk of circuit court, under s. 59.40 (4), to contract with  
17 a debt collector, as defined in s. 427.103 (3), or enter into an agreement with the  
18 department of revenue under s. 71.93 (8) for the collection of ~~unpaid fines and~~  
19 ~~forfeitures debt.~~

20 **SECTION 1914e.** 59.52 (31) (b) of the statutes is repealed.

21 **SECTION 1914f.** 59.52 (31) (c) of the statutes is repealed.

22 **SECTION 1914g.** 59.52 (31) (d) of the statutes is amended to read:

23 59.52 (31) (d) With regard to any contract to which a county is a party ~~and~~  
24 ~~which is subject to review by the board or by a committee of the board under this~~  
25 ~~subsection, the board's finance committee is the only committee which has~~



1 ~~jurisdiction over the contract, the board shall have no role in the review of the~~  
2 ~~contract and the contract may take effect without approval by the board.~~

3 **SECTION 1915.** 59.54 (28) of the statutes is created to read:

4 **59.54 (28) CRIME PREVENTION FUNDING BOARD.** (a) In this subsection:

5 1. "Chief elected official" means the mayor of a city or, if the city is organized  
6 under subch. I of ch. 64, the president of the council of that city, the village president  
7 of a village, or the town board chairperson of a town.

8 2. "Crime board" means a crime prevention funding board that is created under  
9 this subsection.

10 3. "Municipality" means a city, village, or town.

11 (b) A county may create a crime board. In a county that creates a crime board,  
12 the treasurer shall receive moneys and deposit them as described in s. 59.25 (3) (gm).  
13 The funds in such an account may be distributed upon the direction of the crime  
14 board under par. (d). The crime board shall meet, and its members may receive no  
15 compensation, other than reimbursement for actual and reasonable expenses  
16 incurred in the performance of their duties. Members shall serve for the terms that  
17 are determined by the crime board.

18 (c) A county crime board shall consist of the following members:

19 1. The presiding judge of the circuit court, or his or her designee

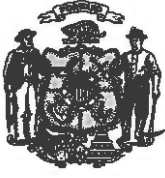
20 2. The district attorney, or his or her designee.

21 3. The sheriff, or his or her designee.

22 4. One of the following county officials, or his or her designee:

23 a. The county executive.

24 b. If the county does not have a county executive, the county administrator.



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBb0722/1  
ALL:all

SENATE AMENDMENT 2,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO SENATE BILL 21

July 7, 2015 - Offered by Senators LASEE, WANGGAARD, FARROW, STROEBEL,  
LEMAHIEU, VUKMIR and S. FITZGERALD.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 29, line 15: delete that line.

3 2. Page 40, line 12: after that line insert:

4 "SECTION 293d. 16.529 (1) of the statutes is repealed and recreated to read:

5 16.529 (1) In this section, "state agency" has the meaning given in s. 40.02 (54).

6 SECTION 293h. 16.529 (2) of the statutes is amended to read:

7 16.529 (2) Notwithstanding ss. 20.001 (3) (a) to (c) and 25.40 (3), beginning in  
8 ~~the 2007-09 fiscal biennium~~, during each fiscal biennium the secretary shall lapse  
9 to the general fund or transfer to the general fund from each state agency  
10 appropriation specified in sub. (3) an amount equal to that portion of the total  
11 amount of principal and interest to be paid on obligations issued under s. 16.527  
12 during the fiscal biennium that is allocable to the appropriation, as determined



1           **(7) RULES; ENFORCEMENT.** (a) The department shall promulgate any rules that  
2 the department determines are necessary to implement and ensure compliance with  
3 this section.

4           (b) If requested by any person performing the work described in sub. (2m), the  
5 department shall inspect the payroll records of any contractor, subcontractor, or  
6 agent performing work on a project of public works that is subject to this section to  
7 ensure compliance with this section.

8           (c) Section 111.322 (2m) applies to discharge and other discriminatory acts  
9 arising in connection with any proceeding under this section.”.

10           **4.** Page 73, line 15: after that line insert:

11           **“SECTION 453xm.** 19.36 (12) of the statutes is amended to read:

12           **19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES.** Unless access is  
13 specifically authorized or required by statute, an authority ~~shall~~ may not provide  
14 access to a record prepared or provided by an employer performing work on a project  
15 to which s. ~~66.0903, 103.49, or 103.50~~ 16.856 or 84.062 applies, or on which the  
16 employer is otherwise required to pay prevailing wages, if that record contains the  
17 name or other personally identifiable information relating to an employee of that  
18 employer, unless the employee authorizes the authority to provide access to that  
19 information. In this subsection, “personally identifiable information” does not  
20 include an employee’s work classification, hours of work, or wage or benefit payments  
21 received for work on such a project.”.

22           **5.** Page 123, line 3: increase the dollar amount for fiscal year 2016-17 by  
23 \$25,000,000 for the purpose for which the appropriation is made.

24           **6.** Page 583, line 23: delete “Mason” and substitute “Michigan”.

- 1           **7.** Page 584, line 24: delete that line.
- 2           **8.** Page 585, line 1: delete lines 1 to 16.
- 3           **9.** Page 588, line 8: delete lines 8 to 12.
- 4           **10.** Page 589, line 20: delete lines 20 to 25.
- 5           **11.** Page 590, line 1: delete lines 1 to 2 and substitute:
- 6           **"SECTION 1914h.** 59.52 (31) (e) of the statutes is created to read:
- 7           59.52 (31) (e) With regard to any transaction to which s. 59.17 (2) (b) 3. applies,
- 8           such a transaction is not subject to the provisions of pars. (b), (c), and (d)."
- 9           **12.** Page 602, line 25: after that line insert:
- 10           **"SECTION 1948y.** 66.0129 (5) of the statutes is amended to read:
- 11           66.0129 (5) BIDS FOR CONSTRUCTION. The nonprofit corporation shall let all
- 12           contracts exceeding \$1,000 for the construction, maintenance or repair of hospital
- 13           facilities to the lowest responsible bidder after advertising for bids by the publication
- 14           of a class 2 notice under ch. 985. ~~Sections~~ Section 66.0901 ~~and 66.0903~~ apply applies
- 15           to bids and contracts under this subsection."
- 16           **13.** Page 608, line 1: delete "local".
- 17           **14.** Page 608, line 2: delete "governmental unit" and substitute "1st class city".
- 18           **15.** Page 608, line 3: delete "local governmental unit" and substitute "1st class
- 19           city".
- 20           **16.** Page 611, line 9: after "**cities**" insert "**or villages**".
- 21           **17.** Page 611, line 13: delete "conditions".
- 22           **18.** Page 611, line 13: delete "all" and substitute "any".
- 23           **19.** Page 611, line 14: delete "are" and substitute "is".